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SLN
Bourne

THE TRIAL OF Lieutenant CHARLES BOURNE,

UPON THE PROSECUTION OF

Sir JAMES WALLACE, Knt.

FOR AN

ASSAULT:

ALSO

The LAW PLEADINGS, the ARGUMENTS of COUNSEL, and the SPEECH of Mr. Juſtice WILLES upon paſſing JUDGMENT.

Taken in Short-Hand by Mr. BLANCHARD.

TO WHICH ARE ADDED

The whole of the AFFIDAVITS on both Sides; the additional AFFIDAVITS offered to the COURT by the DEFENDANT'S COUNSEL, and the RESOLUTIONS of the MARINE CORPS on his CONDUCT.

With NOTES by Mr. BOURNE.

LONDON:

Printed for S. BLADON, No. 13. Pater-noſter Row.

MDCCLXXXIII.

1. Assault and Battery—
Trials—Gt. Br.—
ED

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THE KING

On the PROSECUTION of

SIR JAMES WALLACE, KNT.

AGAINST

LIEUT. CHARLES BOURNE,

FOR A LIBEL.

MIDDLESEX.

INDICTMENT charges; that Sir James Wallace, Knt. for divers, to wit, eleven years before the printing and publiſhing of any of the ſeveral falſe, ſcandalous, infamous, wicked, and malicious libels hereinafter mentioned, had been, and was an officer, that is to ſay, a captain, in his Majeſty's navy; and lately before the printing, and publiſhing of the falſe, ſcandalous, infamous, and defamatory libels hereinafter mentioned, had been the captain and commander of a certain ſhip of war, of our ſaid Lord the King, called the Warrior, and that whilſt the ſaid Sir James Wallace was commander of the ſaid ſhip of war, Charles Bourne, late of Weſtminſter, in the ſaid county of Middleſex, Gentleman, was an officer on board of and belonging to the ſaid ſhip, that is to ſay, a lieutenant of marines, on board the ſaid ſhip, that is to ſay at Weſtminſter aforeſaid, in the ſaid county; and that the ſaid Sir James Wallace always behaved and conducted himſelf on board the ſaid ſhip, called the Warrior, towards the ſaid Charles Bourne, and the other officers on board the ſaid ſhip with propriety; *to wit*, at Weſtminſter aforeſaid, in the ſaid county.

That the ſaid Charles Bourne well knowing the premiſes, but being an ill-diſpoſed perſon, and of a wicked and malicious temper and diſpoſition, and unlawfully, unjuſtly, wickedly, and maliciouſly, deviſing, deſigning, contriving, and intending, to aſperſe, ſcandalize, and viliſy, the ſaid Sir James Wallace, and unjuſtly to impeach the courage, veracity, and honour of the ſaid Sir James Wallace; and unjuſtly to inſinuate, and as much as in him, the ſaid Charles Bourne lay, to cauſe it to be believed, that the ſaid Sir James Wallace was deſtitute of every principle of honour, and every idea of a gentleman, and that he was a daſtardly coward and ſcoundrel, and that he, the ſaid Sir James Wallace, abuſed his authority of commander of the ſaid ſhip, called the Warrior, and had treated the ſaid Charles Bourne with unmerited inſolence and abuſe, whilſt the ſaid Charles Bourne was ſo on board the ſaid ſhip, and under the command of the ſaid Sir James Wallace as aforeſaid, on the 23d day of December, in the 23d year of the reign of our Sovereign Lord, George the Third, now King of Great-Britain, France, and Ireland, Defender of the Faith, with force and arms, at Weſtminſter aforeſaid, in the ſaid county of Middleſex, in a certain public newſpaper, intituled the Morning Herald, and Daily Advertiſer, No. 671, Monday, December, 23, 1782, a certain falſe, wicked, ſcandalous, and malicious libel, with the name of him the ſaid Charles Bourne thereunto ſet, of and concerning the ſaid Sir James Wallace, and of and concerning his behaviour, as commander of the ſaid ſhip of war, called the Warrior, towards the ſaid Charles Bourne, did moſt unlawfully, ſcandalouſly, wickedly, and maliciouſly, print and publiſh,

liſh, and cauſe to be printed and publiſhed, in which ſaid libel, of and concerning the ſaid Sir James Wallace, and of and cocerning his behaviour as commander of the ſaid ſhip of war, called the Warrior, are contained divers falſe ſcandalous, wicked, and malicious matters, according to the tenor following, that is to ſay. For the Morning Herald, Mr. Editor, In anſwer to a Letter in the Herald of this day, ſigned "James Wallace," I, (meaning himſelf, the ſaid Charles Bourne,) am to obſerve the paragraph therein alluded to, was not inſerted either by me, or by my knowledge, and whatever Sir James Wallace, (meaning the ſaid Sir James Wallace) may think, it requires very little diſcernment to diſcover his motives for obtruding a private quarrel on the notice of the public. The aſſertion of Sir James Wallace, (meaning the ſaid Sir James Wallace) "that I never once came to the point, either in Jamaica, Bath, or London,"* I ſhall leave for the unprejudiced mind to determine on, by ſtating a few facts, but I muſt firſt obſerve, that it is with infinite regret I find myſelf obliged to trouble the public with a detail ſo unintereſting, which yet I hope they will allow is become abſolutely neceſſary for the vindication of my honour. On my arrival in England I was informed that Sir James Wallace, (meaning the ſaid Sir James Wallace) was at Bath; my feelings, as an officer and a man, induced me to haſten thither, either to receive ample apology for the inſults I had ſuffered, or to give him, (meaning the ſaid Sir James Wallace) that chaſtiſement he ſo juſtly merited at my hands. When at Bath,

* See the letter here alluded to, ſigned James Wallace, in Mr. Bourne's affidavit, and in the affidavit of Mr. Barr, printer of the Morning Herald.

not being able to obtain an interview with Sir James Wallace, (meaning the ſaid Sir James Wallace) I ſent him the following note, "Mr. Bourne acquaints Sir James Wallace, that if he, (meaning the ſaid Sir James Wallace) perſiſts in not ſeeing him, (meaning the ſaid Charles Bourne) it will confirm the opinion Mr. Bourne has long entertained, that Sir James Wallace is deſtitute of every principle of honour, and every idea of a gentleman. Mr. Bourne underſtanding that Sir James Wallace, (meaning the ſaid Sir James Wallace) has ladies with him, is the reaſon he does not call on him in perſon, White-Lion, Friday Morn. To this note I received a verbal anſwer in theſe words, "very well." Next day I ſaw him, (meaning the ſaid Sir James Wallace) in the ſtreet, on which I told him I was glad to meet him, but was ſorry his conduct put it out of my power to treat him as a gentleman, on which he pulled out a piſtol and cocked it at my breaſt, declaring he would ſhoot me. I pointed out the impropriety of his conduct and urged a more private meeting, which he refuſing, I ſhook my cane over his (meaning the ſaid Sir James Wallace's) head, applying ſuch epithets as I thought his then conduct deſerved; ten minutes after I called at his houſe properly prepared; he being denied, I wrote the following letter, and however diſtreſſing it may be for a gentleman to uſe ſuch language, I was obliged to ſuit it to the behaviour of the perſon to whom it was to be addreſſed. "To Sir James Wallace," (meaning the ſaid Sir James Wallace) "Sir, I, (meaning himſelf the ſaid Charles "Bourne) yeſterday, by letter acquainted you, "(meaning the ſaid Sir James Wallace) that I, "(meaning himſelf, the ſaid Charles Bourne) con-

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" conſidered you (meaning the ſaid Sir James
" Wallace) as deſtitute of every principle of
" honour, and every idea of a gentleman; your
" infamous behaviour this morning in the ſtreet,
" convinces me (meaning the ſaid Charles
" Bourne) that you (meaning the ſaid Sir James
" Wallace) are a daſtardly coward and ſcoun-
" drel; when I (meaning the ſaid Charles
" Bourne) was on board the ſhip, you (meaning
" the ſaid Sir James Wallace) commanded, you
" (meaning the ſaid Sir James Wallace) treated
" me (meaning himſelf, the ſaid Charles Bourne)
" with the moſt unmerited inſolence and abuſe,
" becauſe you (meaning the ſaid Sir James
" Wallace) knew it was not in my power
" (meaning the power of the ſaid Charles Bourne)
" to reſent it, (meaning ſuch inſolence and
" abuſe). When no longer under your command
" I ſeized the firſt opportunity at Jamaica of
" demanding that ſatisfaction of you which an
" injured gentleman had a right to expect, you
" (meaning the ſaid Sir James Wallace) then
" meanly and cowardly eſcaped from my re-
" ſentment (meaning the reſentment of him,
" the ſaid Charles Bourne) for that time, by
" giving me to underſtand that I ſhould hear
" from you, but in that, you (meaning the
" ſaid Sir James Wallace) proved yourſelf
" (meaning the ſaid Sir James Wallace) a liar.
" I flew to Bath immediately on my arrival in
" England; my meſſages and note to you yeſ-
" terday muſt have convinced you what were
" my intentions, but you dared to offer inſults
" at a time, when you knew they could not be
" reſented, and have not reſolution to meet
" the man whom you ſo greatly injured. Your
" flying from Bath ſhall not protect you from

" my

" my reſentment, the inſults I have received " from you are too great to be forgotten or " forgiven, I (meaning the ſaid Charles Bourne) " ſhall expoſe you (meaning the ſaid Sir James " Wallace) in the public prints, as the ſcoun- " drel, I (meaning the ſaid Charles Bourne) " know you (meaning the ſaid Sir James Wal- " lace) to be, and treat you (meaning the ſaid " Sir James Wallace) as ſuch wherever I (mean- " ing the ſaid Charles Bourne) meet you; " (meaning the ſaid Sir James Wallace) for " which purpoſe I (meaning the ſaid Charles " Bourne) will follow you (meaning the ſaid " Sir James Wallace) to London, or to any " part of the world, " Charles Bourne." Bath, " White Lion, Saturday noon." To this I (meaning the ſaid Charles Bourne) received the ſame verbal anſwer as before, and Sir James (meaning the ſaid Sir James Wallace) ſet off for London. On my return from Bath a noble- man did me the honor of calling on Sir James Wallace (meaning the ſaid Sir James Wallace) to inform him that I was in town, and to know his determination, but could not ſee him, as I ſuppoſe he was cloſeted, preparing that com- plaint of me to the Admiralty, which he men- tioned in his letter, without telling the public the receipt it met with from that right honoura- ble board. Without any further comment I take my leave of a newſpaper, where, I muſt confeſs, I did not expect to meet Sir James Wallace; (meaning the ſaid Sir James Wallace) and whatever my own feelings might have urged me to, the opinions of many of the re- ſpectable officers of the corps I have the honor to ſerve in, has determined me to look upon him much more as an object of my contempt, than

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my reſentment. Charles Bourne, Whitehall Chambers, Saturday, December 21ſt, 1782. In contempt of our ſaid ſovereign lord the king and his laws, to the great ſcandal, infamy, diſgrace, damage, injury, and diſcredit of the ſaid Sir James Wallace, to the evil and pernicious example of all others in the like caſe offending, and alſo againſt the peace, &c.

SECOND COUNT. That Charles Bourne, well knowing the premiſes aforeſaid, but being ſuch perſon as aforeſaid, and unlawfully, unjuſtly, wickedly, and maliciouſly deviſing, deſigning, contriving, and intending as aforeſaid, afterwards, *(to wit)* on the ſaid 23d day of December, in the ſaid 23d year of the reign of our ſaid preſent ſovereign lord the king, with force and arms at Weſtminſter aforeſaid, in the ſaid county of Middleſex, in a certain public newſpaper, intituled the Morning Herald and Daily Advertiſer, No. 671, Monday, December 23, 1782, unlawfully, wickedly, and maliciouſly did print and publiſh; and cauſe and procure to be printed and publiſhed, a certain other falſe, wicked, ſcandalous and malicious libel of and concerning the ſaid Sir James Wallace, in which ſaid laſt mentioned libel are contained, among other things, divers falſe, ſcandalous, wicked, and malicious matters of and concerning the ſaid Sir James Wallace, and of and concerning his behaviour, as commander of the ſaid ſhip of war called the Warrior, towards the ſaid Charles Bourne, that is to ſay in one part thereof, according to the tenor following, *(to wit.)* On my (meaning the ſaid Charles Bourne's) arrival in England I was informed that Sir James Wallace (meaning the ſaid Sir James Wallace) was at Bath; my feel-

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ings as an officer and a man induced me to haſten thither, either to receive ample apology for the inſults I had ſuffered; or to give him (meaning the ſaid Sir James Wallace) that chaſtiſement he ſo juſtly merited at my hands; when at Bath, not being able to obtain an interview with Sir James Wallace, I ſent him the following note. "Mr. Bourne acquaints Sir James Wallace (meaning the ſaid Sir James Wallace) that if he (meaning the ſaid Sir James Wallace) perſiſts in not ſeeing him (meaning the ſaid Charles Bourne) it will confirm the opinion Mr. Bourne has long entertained, that Sir James Wallace (meaning the ſaid Sir James Wallace) is deſtitute of every principle of honor, and every idea of a gentleman. Mr. Bourne, underſtanding that Sir James Wallace has ladies with him, is the reaſon he does not call on him in perſon. White Lion, Friday morning." To this note I received a verbal anſwer in theſe words, "very well." Next day I ſaw him (meaning the ſaid Sir James Wallace) in the ſtreet; on which I told him I was glad to meet him, but was ſorry his conduct put it out of my power to treat him as a gentleman; on which he pulled out a piſtol and cocked it at my breaſt, declaring he would ſhoot me. I pointed out the impropriety of his conduct; and urged a more private meeting, which he refuſing, I (meaning the ſaid Charles Bourne) ſhook my cane over his (meaning the ſaid Sir James Wallace's) head, applying ſuch epithets as I thought his then conduct deſerved; ten minutes after I called at his houſe, properly prepared; he being denied, I wrote the following letter; and however diſtreſſing it muſt be for a gentleman to uſe ſuch language, I was obliged to ſuit it to the behaviour of the perſon to whom

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it was to be addreſſed. "To Sir James Wallace." Sir, (meaning the ſaid Sir James Wallace I (meaning the ſaid Charles Bourne) yeſterday by letter acquainted you (meaning the ſaid Sir James Wallace) that I (meaning himſelf, the ſaid Charles Bourne) conſidered you (meaning the ſaid Sir James Wallace) as deſtitute of every principle of honor, and every idea of a gentlemen; your infamous behaviour (meaning the behaviour of the ſaid Sir James Wallace) this morning in the ſtreet, convinces me (meaning him, the ſaid Charles Bourne) that you (meaning the ſaid Sir James Wallace) are a daſtardly coward and ſcoundrel; when I (meaning the ſaid Charles Bourne) was on board the ſhip (meaning the ſaid ſhip called the Warrior) you (meaning the ſaid Sir James Wallace) commanded, you (meaning the ſaid Sir James Wallace) treated me (meaning him the ſaid Charles Bourne) with the moſt unmerited inſolence and abuſe, becauſe you (meaning the ſaid Sir James Wallace) knew it was not in my power (meaning the power of the ſaid Charles Bourne) from my ſituation (meaning the ſituation of the ſaid Charles Bourne) to reſent it (meaning ſuch inſolence and abuſe) when no longer under your command I ſeized the firſt opportunity at Jamaica of demanding that ſatisfaction of you which an injured gentleman had a right to expect. You, (meaning the ſaid Sir James Wallace) then meanly and cowardly eſcaped from my reſentment for that time, by giving me to underſtand that I ſhould hear from you, but in that you (meaning the ſaid Sir James Wallace) proved yourſelf a liar. I flew to Bath immediately on my arrival in England; my meſſages and notes to you yeſterday, muſt have convinced you

what were my intentions, but you dared to offer inſults at a time when you knew they could not be reſented, and have not reſolution to meet the man whom you ſo greatly injured. Your (meaning him the ſaid Sir James Wallace) flying from Bath ſhall not protect you from my reſentment, the inſults I have received from you are too great to be forgotten, or forgiven; I (meaning the ſaid Charles Bourne) ſhall expoſe you (meaning the ſaid Sir James Wallace) in the public prints as the ſcoundrel, I (meaning the ſaid Charles Bourne) know you (meaning the ſaid Sir James Wallace) to be, and treat you (meaning the ſaid Sir James Wallace) as ſuch wherever I meet you, for which purpoſe I will follow you to London, or to any part of the world, Charles Bourne. Bath, White Lion, Saturday Noon." In contempt of our ſovereign lord the king and his laws, to the great damage, diſgrace, ſcandal, infamy, diſgrace, and injury of the ſaid Sir James Wallace, to the evil and pernicious example of all others in the like caſe offending, and alſo againſt the peace, &c.

THIRD COUNT. That the ſaid Charles Bourne of his farther malice againſt the ſaid Sir James Wallace, and again unlawfully, wickedly, and maliciouſly contriving and intending to injure and ruin the character and reputation of the ſaid Sir James Wallace, and unjuſtly to inſinuate and cauſe to be believed that the ſaid Sir James Wallace was deſtitute of every principle of honor and every idea of a gentleman, and that he was a coward and a ſcoundrel afterwards *(to wit)* on the ſaid 23d day of December, in the ſaid 23d year of the reign of our ſaid preſent ſovereign lord the king, with force and arms, at Weſtminſter

Weſtminſter aforeſaid, in the ſaid county of Middleſex, unlawfully, ſcandalouſly, wickedly, and maliciouſly did print and publiſh, and cauſe to be printed and publiſhed a certain other falſe, wicked, ſcandalous, and malicious libel of and concerningt he ſaid Sir James Wallace, in which ſaid laſt mentioned libel are contained, amongſt other things, the ſeveral falſe, ſcandalous, wicked, and malicious matters following of and concerning the ſaid Sir James Wallace, that is to ſay, in one part thereof according to the tenor following *(to wit)* Sir (meaning the ſaid Sir James Wallace) I (meaning the ſaid Charles Bourne) yeſterday by letter acquainted you (meaning the ſaid Sir James Wallace) that I conſidered you (meaning the ſaid Sir James Wallace) as deſtitute of every principle of honor, and every idea of a gentleman; your infamous behaviour this morning in the ſtreet convinces me that you (meaning the ſaid Sir James Wallace) are a daſtardly coward and ſcoundrel, in contempt of our ſaid lord the king and his laws, to the great damage, diſcredit, ſcandal, infamy, and diſgrace of the ſaid Sir James Wallace, to the evil and pernicious example of all others in the like caſe offending, and alſo againſt the peace of our ſaid lord the king, his crown and dignity.

FOURTH COUNT. That the ſaid Charles Bourne, of his further malice againſt the ſaid Sir James Wallace, and again unlawfully, unjuſtly, wickedly, and maliciouſly deviſing, deſigning, contriving, and intending to injure and ruin the character and reputation of the ſaid Sir James Wallace, and unjuſtly to inſinuate and cauſe it to be believed that the ſaid Sir James Wallace was deſtitute of every principle of ho-

nor, and every idea of a gentleman, and that he was a coward and ſcoundrel, and had miſbehaved himſelf as commander of the ſaid ſhip of war called the Warrior, and as ſuch commander had treated the ſaid Charles Bourne with unmerited inſolence and abuſe on board the ſaid ſhip, afterwards, *(to wit)* on the 23d day of December, in the 23d year aforeſaid, unlawfully, ſcandalouſly, wickedly, and maliciouſly did publiſh and cauſe to be publiſhed a certain other falſe, wicked, ſcandalous, and malicious libel, of and concerning the ſaid Sir James Wallace, and of and concerning the behaviour of the ſaid Sir James Wallace, as Commander of the ſaid ſhip called the Warrior, towards the ſaid Charles Bourne, in which ſaid laſt mentioned libel are contained, amongſt other things, divers falſe, ſcandalous, wicked, and malicious matters of and concerning the ſaid Sir James Wallace, and of and concerning his behaviour as commander of the ſaid ſhip towards the ſaid Charles Bourne, according to the tenor following (that is to ſay) Sir (meaning the ſaid Sir James Wallace) I (meaning the ſaid Charles Bourne) yeſterday by letter acquainted you (meaning the ſaid Sir James Wallace) that I (meaning himſelf the ſaid Charles Bourne) conſidered you (meaning the ſaid Sir James Wallace) as deſtitute of every principle of honor, and every idea of a gentleman, your infamous behaviour (meaning the behaviour of the ſaid Sir James Wallace) this morning (meaning morning) in the ſtreet, convinces me (meaning him the ſaid Charles Bourne) that you (meaning the ſaid Sir James Wallace) are a daſtardly coward and ſcoundrel; when I (meaning the ſaid Charles Bourne) was on board the ſhip (meaning the ſaid ſhip called

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the Warrior) you (meaning the ſaid Sir James Wallace) treated me (meaning the ſaid Charles Bourne) with the moſt unmerited inſolence and abuſe, becauſe you (meaning the ſaid Sir James Wallace) knew it was not in my power (meaning in the power of the ſaid Charles Bourne) from my ſituation (meaning the ſituation of the ſaid Charles Bourne) to reſent it (meaning ſuch inſolence and abuſe) when no longer under your command I ſeized the firſt opportunity at Jamaica of demanding that ſatisfaction of you which an injured gentleman had a right to expect, you (meaning the ſaid Sir James Wallace) then meanly and cowardly eſcaped from my reſentment for that time, by giving me to underſtand, that I ſhould hear from you, but in that you (meaning the ſaid Sir James Wallace) proved yourſelf (meaning the ſaid Sir James Wallace) a liar. I flew to Bath immediately on my arrival in England, my meſſages and note to you yeſterday muſt have convinced you what were my intentions, but you dared to offer inſults at a time when you knew they could not be reſented, and have not reſolution to meet the man whom you ſo greatly injured, your (meaning the ſaid Sir James Wallace) flying from Bath ſhall not protect you from my reſentment, the inſults I have received from you are too great to be forgotten, or forgiven; I (meaning the ſaid Charles Bourne) ſhall expoſe you (meaning the ſaid Sir James Wallace) in the public prints as the ſcoundrel I (meaning the ſaid Charles Bourne) know you to be, and treat you, (meaning the ſaid Sir James Wallace) as ſuch wherever I meet you, for which purpoſe I will follow you to London, or to any part of the world, Charles Bourne. Bath, Saturday noon,

White,

White Lion. In contempt of our ſaid ſovereign lord the king, and his laws, to the great damage, diſcredit, ſcandal, infamy, and diſgrace of the ſaid Sir James Wallace, to the evil and pernicious example of all others in the like caſe offending, and alſo againſt the peace of our ſaid ſovereign lord the king, his crown and dignity.

Witneſſes,

William Sleigh
Sir Jas. Wallace
Robert Elliott
William Eaſton
William James
Thomas Hurſleſton
John Foy
George Burroughs

Upon this indictment the defendant ſuffered judgment to go by default.

THE KING

On the PROSECUTION of

SIR JAMES WALLACE, KNT.

AGAINST

LIEUT. CHARLES BOURNE,

FOR AN ASSAULT.

MIDDLESEX.

INDICTMENT charges, that Charles Bourne, late of the parish of St. Martin in the Fields, in the county of Middlesex, Gent. being a person of wicked and malicious mind and disposition, and not regarding the laws of this kingdom, and having conceived great malice, hatred, and ill-will towards Sir James Wallace, Knt. a peaceable liege subject of our said lord the king, on the 6th day of February, in the 23d year of our sovereign lord George the third, king of Great Britain, and so forth, with force and arms, at the parish aforesaid, in the county aforesaid, unlawfully and maliciously did make an assault upon the same Sir James Wallace, then and there being in the peace of God and our said lord the king; and that the said Charles Bourne with *a certain large walking stick*,* which he then and there had, and held in his right hand, then and there unlawfully, maliciously, and violently did strike and beat him the said Sir James Wallace in and upon the head and left arm of him the said Sir James Wallace, giving to

* See Mr. Coomb's affidavit in the Appendix, by which it appears this great walking stick was a slight cane.

to him, the ſaid Sir James Wallace, with the walking ſtick aforeſaid divers ſevere and dangerous blows, ſtrokes, and bruiſes, in and upon the head and left arm of him the ſaid Sir James Wallace, with *intention* then and there feloniouſly, wilfully, and of the malice aforethought of him the ſaid Charles Bourne to *kill and murder** the ſaid Sir James Wallace, and the ſaid Charles Bourne, then and there unlawfully and maliciouſly did other wrongs to the ſaid Sir James Wallace, to the great damage of the ſaid Sir James Wallace, in contempt of our ſaid lord the king and his laws, and againſt the peace, &c.

SECOND COUNT, charges, that the ſaid Charles Bourne, being a perſon of a wicked and malicious mind and diſpoſition, and not regarding the laws of this kingdom, afterwards, (that is to ſay) on the ſaid 6th day of February, in the 23d year aforeſaid, with force and arms, at the pariſh aforeſaid, in the county aforeſaid, unlawfully and maliciouſly did make another aſſault upon the ſaid Sir James Wallace, then and there being in the peace of God, and our ſaid lord the king, and that the ſaid Charles Bourne, with a certain *large walking ſtick*, which he then and there had, and held in his right hand, then and there unlawfully, maliciouſly, and violently did ſtrike and beat him, the ſaid Sir James Wallace, giving to him the ſaid Sir James Wallace with his walking ſtick, aforeſaid, divers ſevere and dangerous blows, ſtrokes, and bruiſes in and upon the head and left arm of him the ſaid Sir James Wallace, and the ſaid Charles Bourne

* See Mr. Beareroft's argument in aggravation, wherein this charge is given up.

Bourne then and there unlawfully and maliciouſly did other wrongs to the ſaid Sir James Wallace, to the great damage of the ſaid Sir James Wallace, in contempt of our ſaid lord the king, and his laws, and againſt the peace, &c.

THIRD COUNT charges that the ſaid Charles Bourne afterwards, that is to ſay on the 6th day of February, in the 23d year aforeſaid, with force and arms, at the pariſh aforeſaid, in the county aforeſaid, did make another aſſault upon the ſaid Sir James Wallace, then and there being in the peace of God, and our ſaid lord the king, and then and there did beat, bruiſe, wound, and ill-treat the ſaid Sir James Wallace, ſo that his life was greatly deſpaired of, and then and there did other wrongs to the ſaid Sir James Wallace to the great damage of the ſaid Sir James Wallace, and againſt the peace, &c.

Witneſs,

Sir James Wallace, Knt.

To this indictment the defendant pleaded NOT GUILTY.

*** Had Mr. Bourne been indicted ſimply for an *aſſault*, he would have pleaded *guilty*, as the *blow* given by him to the plaintiff, with a *ſmall cane*, being intended as a *public chaſtiſement*, was a fact he neither wiſhed to *palliate*, nor to *deny*, but he thought it incumbent on him to controvert the diabolical charge of an *intent* to commit *murder*. See Mr. Bearcroft's ſpeech at opening the trial, wherein the *intent* to commit *murder* is given up.

In the King's-Bench, June 5, 1783.

Before the Hon. Mr. JUSTICE BULLER, and a Special Jury,

The KING againſt CHARLES BOURNE, Eſq.

MR. ADAM opened the indictment, which he ſtated to be for an aſſault upon the perſon of Sir James Wallace, by unlawfully beating him with a walking ſtick upon the head, &c, whereby his life was greatly deſpaired of, &c.

Mr. BEARCROFT. May it pleaſe your lordſhip, and you gentlemen of the jury, I am of counſel in this caſe, upon the behalf of the proſecution againſt the defendant, Mr. Charles Bourne. The charge on this indictment is for an aſſault upon Sir James Wallace. That aſſault is charged in two different ways in the indictment, and the difference is extremely important, for the firſt charge is for an aſſault, with the higheſt aggravation that an aſſault can be attended with, that is to ſay, with an intention to commit murder. The circumſtances which attended this aſſault, in fact, perfectly warranted the advice of Sir James's friends; the manner in which it was laid, which is not uncommon in leſs aggravated caſes than the preſent; the grand jury too have found the indictment true, with that aggravation; however, as there are circumſtances which I confeſs, and in opinion of all Sir James Wallaces's counſel, might lead a reaſonable man to doubt, whether it really was attended with that flat intention; we all thought, and we had no difficulty

to

to perſuade Sir James Wallace, that the conduct upon his part, would be more proper and generous, not to go upon that part of the charge; you will not be ſorry therefore to find that you are relieved from that conſideration, I mean the aggravation of the aſſault itſelf by the intention to commit murder; an aggravation, which if it were made out in evidence, moſt undoubtedly would have infinitely more weight than the ſingle offence of the aſſault itſelf. You will underſtand therefore that your inquiry is reduced to a very ſhort, and a very plain queſtion, that is to ſay, whether the defendant, Mr. Bourne, has not committed an aſſault upon the perſon of Sir James Wallace.

When I am ſtanding up to proſecute for an aſſault upon Sir James Wallace, I may be permitted, I truſt, to ſay a word about him. It is a delicate buſineſs, and upon a delicate part of the queſtion, I truſt I ſhall be excuſed if I ſay this, that Sir James Wallace's name prevents any man from entertaining any ſuſpicion of the impropriety or diſhonour of applying to a court of law. I am aware there is ſome degree of impropriety in a court of law of making any thing like an apology for appealing to it, at the ſame time I am perſuaded every gentleman will think thus much might have been ſaid with no degree of impropriety.

Gentlemen, it was eaſy for me to perſuade Sir James Wallace to abſtain from going upon the firſt charge, attended with the aggravation I have mentioned; it was a great deal more difficult for us to adviſe him, and ſucceed in it, as at laſt we did, that he ſhould forbear at preſent going into the circumſtances of a diſpute for a great length of time, which had ſubſiſted between the defendant and Sir James Wallace. When I have ſtated to you as I have, that the ſimple buſineſs

fineſs of this moment will be, for you to try, whether the defendant is, or is not, guilty of an aſſault, my lord, I am afraid, will immediately tell you, it is improper to enter into a long hiſtory of preceding circumſtances, for months before that time. I rejoice, however, and the counſel for Mr. Bourne have a right to ſay, and undoubtedly will ſay, preciſely the ſame thing, that a time will come, and the proper moment will arrive, when he ſhall come up for judgment upon this, as well as upon another occaſion, when that other matter, with propriety may be diſcuſſed here, and in ſuch a way too, that the evidence upon both ſides that with propriety is entered into here, will be to be conſidered in the court above. I am therefore not aſking you to form a judgment upon that point againſt Mr. Bourne, neither will the counſel for Mr. Bourne aſk for that judgment againſt Sir James Wallace, it will relieve you extremely, and therefore nothing of that ſort ſhould paſs now upon this occaſion, when it is impoſſible any thing ſhould paſs that could be perfectly ſatisfactory, or conſidered as a full enquiry upon the preſent occaſion. It remains, therefore, and I have only ſhortly to ſtate to you the evidence, which, is of a ſort that will not and cannot be diſputed upon the part of the defendant*. I am to ſay to you, that upon the 6th of February, as Sir James Wallace was walking in the ſtreet, in his way to the Admiralty, he was met by the defendant, Bourne, who I underſtand is an officer in the marine ſervice; inſtantly as Mr. Bourne perceived Sir James Wallace he made uſe of theſe expreſſions, "You damned ſcoundrel, Sir James Wallace," and immediately ſtruck him with a ſtick, with a braſs

* See note, page 17.

braſs head, upon Sir James Wallaces head*, with ſuch violence, that it cut his hat almoſt round, that it cut through a leather which is frequently worn in the front of hats, and was attended with ſome violent contuſions, which will be proved to you by the ſurgeon, and it was a moſt fortunate circumſtance, with ſuch violence, were theſe blows adminiſtered, that at this moment Sir James is alive to tell you this ſtory, and Mr. Bourne is now to be proſecuted for a miſdemeanour. I am inſtructed, that the ſurgeon, who is the beſt judge of this buſineſs, will tell you, the odds were very much againſt him, being ſtruck upon that part, whether it would not be attended with immediate death. I ſhall call a perſon who is perfectly indifferent to either party, who ſaw the beginning of the affray, another, that ſaw a great part of it, beſides Sir James Wallace, will of courſe be called to give his account; the caſe is reduced to this ſingle queſtion, Is the defendant guilty of an aſſault? If I prove this caſe, or any thing like it, your taſk will be, and you have nothing to do, but to pronounce the defendant guilty. I will take up no more of your time, except I may be permitted to ſay this, that Sir James Wallace is well known to be of great public courage and intrepidity, and if any body was to ſit down to make a liſt of naval officers that have done honor to the navy of this country, Sir James Wallace's name would be the firſt amongſt them.

Sir James Wallace ſworn. Examined by Mr. Sylveſter.

Q. Pleaſe to relate, Sir, what happened to you upon the 6th of February laſt, as you was going to the Admiralty?

A. It

* See Mr. Coomb's affidavit. APPENDIX.

A. It was about the middle of the day, I was going to Mr. Drummond's, I had called at Mr. Drummond's, and was going to call in at the Admiralty, when Mr. Bourne met me in the ſtreet, near Buckingham-court, I think it is near to the Admiralty, he came upon me with theſe words, "You ſcoundrel, Sir James Wallace," or ſomething to that purpoſe, and with a ſtick that appeared to be a cane, with a metal head, as he turned it in his hand.

Q. What ſort of a cane was it?

A. It appeared to be a cane with a metal head. He turned the ſtick in his hand, and with the head (it was) ſtruck me with ſuch violence over the head, as to go through my hat, cut through my hat and the leather, and ſtunned me for ſome time.

Q. That was the hat you had on?

A. This is the hat, cut juſt in the ſtate he left it.

Q. Did he do any thing elſe?

A. Upon receiving the blows I was ſtunned, I put my hand up to cover my head, I recovered my ſenſes again, and then I preſſed on, and began cudgelling with my ſtick, until we were ſeparated by the mob.

Q. You received ſeveral upon your arm?

A. I received ſeveral upon my arm, ſeveral upon my head, two upon my head in particular.

Q. Had you ſtruck Bourne before you received thoſe blows?

A. No.

Q. Had you ſeen him before he came up to you?

A. A very ſhort time before he came up to me.

Q. What condition was you in after theſe blows?

Why,

A. Why, Sir, I was ſtunned for ſome time, and by putting up my hand to my head, which ſaved my head, the blood returned and I recovered; then I preſſed on upon him, and the *cudgelling began**, *till we were ſeparated by the mob.*

Q. What condition was your head in?

A. My head was violently contuſed, and ſtunned for ſome time, and I verily believe, if the blows had ſtruck me upon the temple or top of the head, they happened to fall upon the ſtrongeſt part of the head, if they had ſtruck me upon the temple or middle of the ſkull, I verily believe it would have fractured my ſkull.

Q. You was afterwards attended by a Surgeon.

A. Yes.

Q. Court. Had you more than one blow before you both ſtruck each other with the ſtick?

A. I had ſeveral blows and was ſtunned, and put my arm up here, by a kind of natural impulſe, and then recovered again, then the *cudgelling* began.

Q. You had more than one blow over the head before the cudgelling began?

A. Several. He began and laid on as faſt as he could, like a ſcoundrel as he is.

Q. Deſcribe the blows he gave you before you was able to return them.

A. I believe I did not receive leſs than a dozen.

Q. You repreſent yourſelf as ſtunned?

A. I was ſtunned with the blow.

(*The hat produced, cut through.*)

Q. Jury. Pray, Sir James, were there any menacing words uſed at the time, otherwiſe than what are ſaid to be uſed by the counſel.

A. I think

* This fact of *cudgelling* was not ſtated by the judge, when he made his *report in court.*

A. I think he began by calling me ſcoundrel, but there were but few words paſſed before the blows.

Q. No other words but abuſive words?

A. None but abuſive words.

Croſs examined by Mr. Solicitor General.

You, I am ſure, will do the juſtice to ſtate to the court and jury, this was not the firſt time you had had ſome difference?

A. Sir, for a long time he has run about the world propagating the moſt infernal falſhoods, tending to prejudice the minds of mankind, and to deſtroy my character, and at the time he knew I was wanting to bring this on for hearing.

Court. It is not for this purpoſe to go into it now, I ſuppoſe you will go into it much fuller hereafter.

Mr. Solicitor General. I know that perfectly well, I am ſure you would not have the by-ſtanders ſuppoſe this quite the beginning of the matter, and this done quite ſo cauſeleſsly.

Mr. Bearcroft. I thought I ſtated this was not the proper ſtage.

Court, Whether Sir James is wrong, or Mr. Bourne is wrong, it has nothing to do with the proſecution here.

Mr. Bearcroft. I have no objection to go into the whole matter.

Mr. Solicitor General. I don't mean to go with minuteneſs into it, I only aſk whether Mr. Bourne had complained of your conduct to him, when he was under your command going to Jamaica.

Q. Never *properly**.

Court. We are not going into the merits whether you were right or he right.

Mr. Solicitor General. I only aſk whether Mr. Bourne conceived himſelf ill uſed, and that was the conſequence of what followed?

* *See Mr. Bourne's affidavit, when he ſtates his having complained of Sir James Wallace's conduct to Lord Rodney; &c.*

A. I don't know.

Q. Had it not been ſtated by Mr. Bourne that he had great cauſe of complaint of ſevere rigorous ill-uſage of an officer?

A. I was at that time putting myſelf upon my country to be judged whether I had behaved ill to him, and then at this time it began.

Q. Court. There had been a miſunderſtanding between you before he thought himſelf ill-uſed and had complained?

A. I believe that is very well underſtood.

Mr. Bearcroft. He ſays he had complained, but that matter was then coming to trial who was right or wrong.

A. That is very fair.

Mr. Solicitor General. Do you mean when you ſay that matter was coming to trial, that the propriety of your conduct to him as an officer, or his to you as an officer, was coming before a proper judicature to decide that or ſome collateral matter about a libel?

A. I mean my whole conduct might be weighed againſt his.

Q. Before what court was it coming on for trial?

A. Before the grand jury.

Q. That was upon the libel?

A. Upon the charge for the libel?

Q. Then that was all, was it—there was no other inveſtigation at that time was there?

A. Unleſs we come into the whole of this matter, have I any right to anſwer this gentleman every particular queſtion?

Court. Yes—If he aſks you any thing improper I will ſtop him.

Mr. Solicitor General. I ſhould be very ſorry to do it,

Sir James Wallace. Are you going into the firſt part; I underſtand we are not to go on at preſent upon it — I ſhould be very glad to know what I am to ſay to this?

Q. I want to aſk this fact, whether, at the time you ſaid he knew all your conduct to him and his towards you was coming on to be decided in a court of juſtice, whether you meant any proſecution inſtituted againſt you by a court-martial or any thing of that ſort, to bring your conduct in queſtion?

A. I ſuppoſe the time for the court-martial was elapſed at the ſame time I ſubmitted my whole conduct to my country. *

Q. Now are you quite ſure, from your recollection upon the ſubject, that this blow was in ſuch a very ſhort period after he met you in the ſtreet, or whether there had not been a previous converſation that occupied ſome time, as there might be a good deal in a minute or two?

A. I admitted there were words, but very ſhort.

Q. Do you recollect what the words were?

A. I think it was you ſcoundrel, Sir James Wallace.

Q. Was that all that was ſaid?

A. Upon my word that is all I know.

Q. No ſpeech that was opprobrious—no other words paſſed?

A. No not a word.

Q. He ſaid nothing to you but you ſcoundrel, Sir James Wallace, and hit you a blow upon the head?

A. Yes.

Q. That was the whole of it?

* See Mr. Adam's argument, wherein he acknowledges that the time for granting the court martial was *not* elapſed.

A. Yes.

A. Yes.

Q. Was any body preſent?

A. No, I had nobody but myſelf.

Q. Was any body walking with Mr. Bourne?

A. I believe there was, he ſeemed to have more friends there than I had in the ſtreet, I believe in company with him, but I cannot tell who they were.

Q. You had your eyes in your head and you could ſee whether Mr. Bourne, whoſe perſon you was perfectly acquainted with, you know his perſon perfectly well, and a good deal of his character?

A. I know him perfectly well.

Q. You know a good deal of his character?

A. Yes, indeed.

Q. You could ſee whether he was alone or in company at the time you met?

A. I believe there was a perſon with him, whom he quitted—he quitted the perſon he was walking with and came up to me.

Q. Could you tell the perſon he was with?

A. I believe him to be a clerk in the Admiralty.

Q. Had you ſeen him before?

A. I think I had.

Q. You knew his perſon at the time?

A. Yes.

Q. And perhaps his name?

A. I did not know his name—I had ſeen him before.

Q. How near was you to him at the time this thing happened?

A. I ſuppoſe he might have been ſome yards from us.

Q. Near enough to hear what paſſed, but you don't recollect it?

A. Upon my word you would not have had much recollection if you had had the ſame blows upon your ſcull.

Q. You had no converſation more?

A. I don't recollect any thing more.

Q. You will not ſay there was more?

A. I don't recollect it.

Q. You don't recollect a ſingle word paſſed relative to your conduct to him, or his conduct to you, but the expreſſions before he ſtruck you?

A. Some abuſive language and very ſhort, and he followed it with blows, I am not confident to that ſingle word, to the beſt of my recollection it was you ſcoundrel, Sir James Wallace.

Q. I wiſh you would recollect.

A. Upon my word I do not recollect.

Q. But there might be a good deal more?

A. I cannot recollect any more, but a good deal did paſs—what would you have me ſay?

Q. Why only ſay you do not know if you don't recollect?

A. I have ſaid ſo half a dozen times—its teazing me.

Q. I don't mean by way of teazing, but I want an anſwer?

A. There was ſome abuſive language.

Q. But what you do not know?

A. It was you ſcoundrel, Sir James Wallace.

Q. Court. You don't recollect any other words?

A. Upon my word, my lord, I do not.

Q. I dare ſay Sir James don't know the fact; —you might not perhaps have had attention enough at the time to take notice whether Mr. Bourne had any ſtick at all in his hand, but was walking without one till he happened to ſee you?

A. Upon

A. Upon my word I don't recollect it. *

Q. I am desired to ask you, and I will suggest it to you, whether you was willing to do Mr. Bourne that justice his character you knew demanded; whether he did not ask you that before any blows happened?—Do you recollect any thing of that sort?

A. No, I do not, and besides if he had, the matter was in such a train then I think in honor I could not, the prosecution was to be commenced in a day or two, and if he did I do not recollect it.

Q. Not one way or the other?

A. No.

Q. If he had you should have treated it with neglect, having instituted a prosecution you should have declined it?

A. Have I a right to answer that question?

Court. I don't know exactly Mr. Solicitor what you are driving at—I don't know what you mean by doing that justice his character was entitled to—If you mean any thing that is improper to be asked in a court of justice, Sir James should not answer it.

Mr. Solicitor General. No, I meant nothing of that sort—nothing like that in the world.

Court. Put your question a little more pointed.

Mr. Solicitor General. You recollect nothing about it you said—Now, have you seen that stick with which he struck you?

A. I never saw it but in his hand.

Q. Whether he had any when you first saw him, or whether he borrowed it from a gentleman in company you don't know.——No answer.

* See Mr. Coombe's affidavit in the Appendix, wherein it is sworn that Mr. Bourne had *not* a stick.

Mr.

Mr. Bearcroft. Will you recollect what became of the ſtick?

A. Upon my word I believe it was broke—I think I ſaw it afterwards, the head was fallen off.

Q. You was aſked about a court-martial—Did you apply to the Admiralty for a court-martial?

A. I did.

Q. What was the anſwer you received?

A. That I ought to have tried it in the *firſt inſtance.** I forgot the particular anſwer, but they declined it afterwards.

Mr. Weldon ſworn.—Examined by Mr. Lawe.

Q. What are you?

A. An Attorney.

Q. I believe you was near the place when this happened on the 6th of February.

A. Quite at the place, it was in the courſe of laſt term, I was returning from the Hall, and paſſing along the ſtreet almoſt oppoſite the Admiralty, there was ſome motion or buſtle juſt by the Admiralty Gates almoſt; whoever the perſons were that had been engaged they were at that time ſeparated, and people were diſperſing—I croſſed over the way, having buſineſs at the Admiralty; it was not matter of curioſity altogether. I croſſed over the way, and went into the yard, and into the office of Mr. Maddock, at that office I ſaw ſome clerks, and I believe Mr. Bourne; I believe I ſaid, who have you been beating there, he ſaid Sir James Wallace.

Q. Do you recollect any thing elſe?

A. He was in a heat of paſſion.

* See page 26, *ante*, wherein Sir James Wallace accounts for the refuſal of the court martial, by ſwearing he ſuppoſes the time for granting one was *elapſed*. See alſo note, p. 26.

Q. Do

Q. Do you recollect the words?

A. I don't recollect whether he did not ſay that ſcoundrel, or raſcal, Sir James Wallace, he was in a paſſion.

Q. Who were the perſons preſent beſides?

A. There were three or four clerks there ſpeaking of the parts of it they had ſeen, but upon my word I did not pay any great attention to what paſſed. I did not ſee any thing of it myſelf.

Q. He did not ſee any thing about the beating?

A. No I don't recollect I did.

Q. This was in the preſence of Bourne?

A. Both parties are ſtrangers to me.

Q. You owe it to juſtice to recollect what paſſed, therefore be ſo good to mention the whole of it?

A. The clerks ſpoke more than Mr. Bourne himſelf, each of them were relating the part of it they had ſeen.

Q. They mentioned this in the preſence of Mr. Bourne?

A. In the preſence of Mr. Bourne—every body was talking at once.

Q. Do you recollect any thing elſe?

A. No, except there was a ſtick broke, and a part flung over the Admiralty wall.

Q. This was in the preſence of Mr. Bourne, and not denied by him?

A. To be ſure.

Mr. Bearcroft. Do you recollect any particular expreſſion made uſe of by Mr. Bourne in that converſation?

A. No upon my word, I do not, but I aſked him, I know I ſaid who is it you have been beating, or ſomething to that purpoſe; and he ſaid

that

that ſcoundrel, or raſcal (I forget which) Sir James Wallace, I believe he ſpoke it in the heat of paſſion—I was much ſurprized.

Mr. Graſwell ſworn.—Examined by Mr. Adam.

Q. You live oppoſite the Admiralty?

A. Near it upon the ſame ſide—I am a linen-draper.

Q. Do you recollect what paſſed between Mr. Bourne and Sir James Wallace?

A. Some time in February laſt I was in the ſhop and heard a noiſe in the ſtreet, and I looked through the window and ſaw two gentlemen fighting; one I underſtood to be Lieutenant Bourne, his hat was upon the ground, and the other I afterwards underſtood (as I was a ſtranger to both parties) was Sir James Wallace, and had his arm extended in this manner, while the other was beating him; I ſaw Lieutenant Bourne ſtrike him upon the arm and about the ſhoulder; Sir James had no weapon in his hand to defend himſelf at that time, that I ſaw; after this I ſaw Sir James cloſe with Lieutenant Bourne, and ſeemed to me to wrench the ſtick out of his hand, upon this Lieutenant Bourne turned about, and walked away. I then ſaw a Mr. Goodall go up to Sir James, and take him by the coat, and drew him out of the crowd—(he is a clergyman.)

Examined by Defendant's Counſel.

Q. I will juſt aſk you one queſtion—You did not ſee the beginning of this?

A. No, Sir, I did not.

Mr.

Mr. Farquhar ſworn. Examined by Mr. Bearcroft.

Q. I believe you was called in to attend Sir James Wallace.

A. I was Sir.

Q. Will you be ſo good as to give an account from your obſervation of the conſequences of theſe blows, and the danger of them?

A. It was upon the 6th of February, at ſeven in the evening, I ſaw Sir James Wallace; he told when he came in he had got a ſevere threſhing, or beating, by lieutenant Bourne of the marines, that he had been making applications himſelf, but as he was feveriſh, and it was towards dinner-time when the affair happened, he thought he had better be bled; I examined, and upon his forehead very ſevere blows had been given, there was a contuſion, a ſwelling and puffing, and what is uſually called black and blue, they were ſevere blows. Sir James alſo ſaid he had got ſevere blows upon his arm, I found the arm pretty much in the ſame ſtate with his head, very much bruiſed.

Q. What part of the head?

A. Particularly here, two ſevere blows, whether it was done by a cane or not, I cannot pretend to ſay, but the two ſevere blows were here.

Q. Upon a dangerous part?

A. I believe every blow upon the head is dangerous.

Mr. Solicitor General, I riſe, Gentlemen, to ſay a word or two to you, upon a ſubject that is one of the moſt unpleaſant, and ought to be one of the moſt unpleaſant, perhaps not only to the two gentlemen, who are the contending parties in this proſecution, but to every gen-

tleman that has any ſenſe of feeling or of honor, and that can enter into thoſe ſentiments whih belong in a greater degree perhaps than to moſt other men, to gentlemen that are educated to, and live in, a military profeſſion, and character, that has a tendency to inſpire delicacy and honor, and perhaps they are more delicate in their feelings than others; this is a kind of proſecution not often brought by gentlemen in that ſituation, not frequently. I don't mean to contend before you, that a military or naval officer has not juſt as good a right to appeal to the laws of his country for redreſs, in any grievance whatever, either to his perſon, or his reputation, or his property, as any civil man. I do not mean to ſay that he has not, however there are caſes, unqueſtionably, in which it is impoſſible for the laws of this country, conſtituted as they are, and conſtructed upon the whole as they are, to be diſpenſed with; there are a thouſand caſes, and eſpecially between perſons like theſe, that neither of the contending parties can feel any thing like juſtice in ſuch kind of proſecutions. It is not poſſible. I will ſtate for inſtance, the principle I durſt ſay was told you by my learned friend before I came in, which I admit to be a principle of law, and, my lord, I am ſure, if the cauſe called for it, will tell you it was ſo, for inſtance, that words, however vexatious or opprobrious, however irritating and inflaming, are not a juſtification, even of a fillip upon the noſe. That is the law of England. I have heard that law laid down, and I myſelf was counſel not a great while ago, in a cauſe of a gentleman that may for ought I know be one of the hearers, he was one of my own profeſſion. An action was brought againſt that gentleman,

tleman, by another of the profeſſion, for a very violent aſſault, a very violent blow; there was very provoking language, and the gentleman called him over and over a liar, he gave him a blow, and knocked two of his teeth down his throat; in that caſe words were no juſtification of the blows, and my friend remained unjuſtified; there was a verdict againſt him, but that verdict, gentleman, was ſuch a verdict, ſuch an one that ſhewed the ſenſe of the perſon that tried it, and the judge that ſuperintended it, the jury gave damages to the amount of *one penny*, and the judge would not certify, the battery was proved, and ſuch was the rigor of the law, he ſtruck the man a blow and therefore he muſt pay for it; and the law is not to be violated becauſe it may bear hard upon this or that particular caſe, it may be wiſe upon the whole, and they are not to give way to expediency upon occaſions like this. I ſay the law being in this, and a thouſand inſtances, very incompetent to ſatisfy the feelings of gentlemen of honour and ſpirit, a great deal will remain to be done which is not before you. Indeed the queſtion you are to try, as Sir James Wallace has thought proper to bring the queſtion before you, all you have to try is, whether Sir James Wallace was, or not, in fact, aſſaulted by Mr. Bourne, the defendant; why, Gentlemen, Mr. Bourne never denied he aſſaulted him, never, this is not to bring any great ſecret to the view of the public, all the world knew it, that is all they know now, after Sir James Wallace has cloſed his evidence.

The whole of the evidence is to ſhew, that Mr. Bourne has given him the blow deſcribed by Mr. Farquhar, the Surgeon, and he has done

it juſt in the way any other gentleman would deſcribe it.

Mr. Juſtice Buller. All you can try in this caſe is the aſſault.

Mr. Solicitor General. I believe my client will think himſelf hardly treated, if I was to ſet down, and only ſay Mr. Bourne did meet Sir James Wallace in the ſtreet, and ſo meeting him, he took a little cane, ſuch as that gentleman has in his hand, near me, it is ſuch as is now generally uſed, and he gave him a blow or two upon the head. He thinks it neceſſary you ſhould know, and my lord ſhould know, and the public ſhould underſtand, that this was not an unprovoked, that this was not an inſult, not any injurious conduct upon his part, but that upon the contrary, it was a mode of repelling that which he felt, and does feel, and till juſtice, and complete juſtice, is done between the parties by the ſentence the court will paſs when the affidavits come before them, ſtating the whole mutual conduct of theſe gentlemen to one another. He does feel that he has been one of the moſt injured, one of the moſt degraded men living, at leaſt attempted to be degraded, but he feels ſomething in his own mind, that tells him, that no man living can, with juſtice, ſink him below the character of a man of honor and a gentleman; he feels that, and bears about him a conſciouſneſs, that in all his conduct between Sir James Wallace and himſelf, he has acted handſomely, honorably, right, and dutifully under his command; if he owed him ſubordination and obedience, he was at all times ready to pay, and did pay it, but he does think, that while under the command of Sir James Wallace, he does think no mortal man

in

in the profeſſion, has been uſed with more barbarity, inhumanity, or more improperly, than he has ſuffered upon his part, as coming from Sir James Wallace that is his idea, he thinks ſo. I ſhall not go into the whole hiſtory, or into the detail of theſe kinds of things, which will certainly come before the court one time or other, in order to ſhew what he did, what he ſuffered, and that Sir James was treated with moderation and equity, that is what he thinks, he may be miſtaken in ſo thinking, I don't mean to decide it, whether right or wrong, till the affidavits are heard, but only to expreſs his feelings; I have read his account drawn with his own hand, and if true, and I know nothing to contradict it, his complaints to be ſure are very well founded, his ſufferings muſt have been extremely pungent, his paſſions ſeem compared with theſe kind of ſufferings, to have been very moderate indeed. Now I will add another thing more to the purpoſe, Sir James Wallace, as my learned friend ſays, is an officer of great rank, and to name his name, is to make a panegyric upon him; I ſhould be ſorry to detract from the name of Sir James Wallace, or any part of his character whatſoever; I have heard very good things of him, and in his profeſſion, I don't recollect I ever heard any thing of him that was not good, as to his merit of an officer, as a fighter, or commander, it does not come in queſtion in this cauſe, nor relate to it in any part, he may have it all, I have no reaſon to think he has not, I hope he will enjoy the thanks of his countrymen, with all the reward his merit entitles him to receive. Mr. Bourne has furniſhed me with evidence, if material, which my lord will tell you is not material, and that would ſatisfy you abundantly

ta this hour; when you know the fact, and there is no doubt about the evidence of it, that he ſtands very high in the eſtimation of all his brother officers, they have voluntarily gone forth to bear the teſtimony to his honour, and the propriety and neceſſity of his conduct in this very inſtance of it that I have, and the reſolutions of the whole corps of officers with whom he ſerves, I will not mention their names but juſt ſtate the number of them, there is a teſtimonial of this very fact, ſtating it perfectly, underſtood with all this beating and battery you have now to decide upon, ſigned by general officers, ſix field officers, fifteen captains, and thirty-eight ſubalterns, ſtating the whole matter, not only returning thanks to him for his conduct, but the ſtrongeſt approbation of it, and declaring it impoſſible, in his ſituation, to have acted otherwiſe than he did; I would not go away without mentioning it, for when my friends are gone from here, you will read it in the news-paper.

Mr. Juſtice Buller. Don't you be talking of news-papers, what has that to do with this; nothing.

Mr. Solicitor General. Nothing at all.

Mr. Juſtice Buller. Then it is talking to the news-papers.

Mr. Solicitor General. The very idea of a man being found guilty is a conſiderable degree of imputation upon a man. I deſire it may be not underſtood by the gentlemen that try the cauſe, or any body that hears it, that aught more is decided by this, than Sir James Wallace was aſſaulted by Mr. Bourne, with or without any reaſon ſhort of a complete juſtification, is not decided. It is not decided that my client is not completely

completely juſtified in giving the ſtroke, but the propriety, how much one man is degraded, as an officer or a gentleman, or the other has equally deſerved it, neither is, nor can, nor ought to be decided in this cauſe. Having ſaid ſo much, the gentleman behind me deſires, I underſtand, I ſhould call to you a witneſs, merely to ſtate to you the circumſtances of the aſſault, that is, that it was not that ſudden, brutal, inſolent, overbearing thing you would be apt to collect from the manner in which it has now been ſtated to you. I dare ſay there is ſome forgetfulneſs, in Sir James Wallace, of certain circumſtances that repeatedly led to it, but my client conceiving himſelf injured, and from a long train of hard conduct, the detail of which is not material to go into, meeting Sir James Wallace, ſeeing him at ſome diſtance, a few yards, he ſaid, this is Sir James Wallace, I will ſpeak to him, upon which he made him a bow with great politeneſs and civility, began the converſation, and inſiſted that ill uſage he had met with, and ſaid Sir James muſt give him ſome kind of a ſatisfaction or apology, but Sir James thought proper to decline making that ſort of apology for his conduct to him, or to give him that ſort of explanation that would ſatisfy him, therefoae Mr. Bourne thought it a duty he owed to the public, and eſtimation in the world, to treat him with that ſort of contempt, which he certainly meant to treat Sir James with, by giving him that, which to men of eſtimation, rank, and ſituation in the world, is not very quietly, comfortably, nor pleaſantly taken, that is, a blow on the head, ſaying this,

if

if you think of diſgracing me, I ſhall treat you as you deſerve. It was not in conſequence of that contemptible, brutal, paſſionate expreſſion, but Sir James poſitively refuſing to do that, which Sir James, who knew all the circumſtances, felt in juſtice and propriety he ought to do, Mr. Bourne then gave him this aſſault. I will call a witneſs to give you an account, not like the repreſentation as the ſurgeon gave you, Mr. Farquhar, who was thought fit to be called upon this occaſion. I think Sir James Wallace, this brave officer, as he is juſtly repreſented to be, though he has received a blow on the head, it certainly is not the black and the blue, the puffing and the ſwelling, that will have conſtituted the pungency of that blow, I ſhould have thought not, therefore I ſhould aſk my learned friend, whether the black, and the blue, and the red, which ſeemed to be the moſt trifling ingredient in a cauſe like this, between ſuch parties, can be material. However, it is their buſineſs to conduct their affairs in their own way, and that Sir James Wallace ſhould ſeek for a remedy merely upon the extent of the injury done to the head, or the pain, or upon the queſtion whether he was to be bled in three or four hours after, ſeems to be a ſingular way of putting it. I did think of calling a witneſs, but he may make an affidavit hereafter.

Mr. Bearcroft. After all this ſtating, though no witneſs is called, I hope your lordſhip will permit me to ſay a word.

Mr. Juſtice Buller. No; I ſhall not.

Mr.

Mr. Bearcroft. This black and blue, this puffing and ſwelling, belongs to my learned friend, not to my client.

The ſhort-hand writer's note.

Mr. Juſtice Buller ſent word to myſelf, and Mr. Gurney, who was engaged on the other ſide, not to write down his ſumming up*.

The Jury brought in their verdict, not guilty of the firſt count; but of the ſecond and third counts, they find the defendant guilty of the aſſault.

* It is impoſſible to divine what motive induced the learned judge to ſuppreſs his ſumming up, but there is ſomething very extraordinary in the order to the ſhort-hand writer.

July 5, 1782.

THE KING

AGAINST

LIEUT. CHARLES BOURNE,

FOR AN ASSAULT.

MR. BOURNE being called up to receive judgment, Mr. Juſtice Buller read his report of the evidence given upon trial, which was to the following purport. This cauſe of the King againſt Charles Bourne, is an indictment upon ſeveral different counts.

The firſt count was for aſſaulting, ſtriking and beating Sir James Wallace, with a large walking ſtick, with intent to kill and murder him.

The ſecond count was for ſtriking Sir James Wallace, and violently beating him, with a large walking-ſtick.

And there was another count, for a common aſſault.

The counſel for the proſecution ſaid, they ſhould not go upon the firſt count, therefore they waved that.

Firſt, Sir James Wallace was called up, who ſaid, on the 5th of February, as he was going to Mr. Drummond's, from the Admiralty, the defendant, near Buckingham-court, came up to him, with the words "You ſcoundrel, Sir James Wallace," that he had a cane in his hand, with a metal head, that he ſtruck him, that he cut through his hat, that it ſtunned him, that the blow

blow was ſo violent, the hat was not only cut through, but the leather within-ſide; that he held up his arm, that the defendant laid on upon that; that as ſoon as he recovered a little, he ſtruck at Bourne with a ſtick that he had in his hand, and they both continued ſtriking till the mob parted them; that if the blow had been upon the temple, or middle of his head, he believed it would have killed him

Upon his croſs-examination he ſaid, the defendant had complained of being ill-uſed by him, but that the matter had been coming to a hearing. He was aſked if a court-martial had not been applied for, reſpecting the complaint Mr. Bourne had made, and anſwered that the time for the court-martial was elapſed*. He ſays he does not remember any thing that was ſaid, but the words he mentioned before; he believes a clerk of the Admiralty was walking with him, whom he quitted; he ſays the ſtick was broke with the blows; that as to the court-martial, he himſelf had applied to the Admiralty for one, but they declined giving it, and ſaid he ought to have come in the firſt inſtance†.

The next witneſs was a Mr. Weldon, an Attorney, he ſays he was returning from Weſtminſter-hall, that as he came by the Admiralty gates, he ſaw a great buſtle; that the parties were ſeparated, and he croſſed over to the Admiralty. That he aſked the defendant who he had been beating. He ſaid, that ſcoundrel or raſcal Sir James Wallace.

The next was a Mr. Graſswell, he ſays he heard a noiſe in the ſtreet, that he looked and ſaw the

 profecutor

* See Mr. Adam's argument, where it is candidly acknowledged that the limited time for calling a court-martial was not elapſed, therefore it is natural to infer, that it was refuſed upon conſidering the merits of Sir James Wallace's complaint.

† *See laſt note* and Mr. Adam's argument.

profecutor and priſoner fighting, Sir James Wallace had his arm extended, whilſt the defendant was beating him about the arms and ſhoulders; that Sir James Wallace had no weapon; that he ſaw afterwards Sir James cloſed, and ſeemed to wrench the ſtick out of the defendant's hand, and defendant turned and walked away.

The next witneſs that was called was Dr. Farquhar, who ſays, that about ſeven in the evening, he ſaw Sir James Wallace, that he told him how he had got his drubbing, that he was then very feveriſh, and had a contuſion over his head, it was quite black and blue, and that his arm was in the ſame ſtate, and that he deſired to be bled. The jury found the defendant guilty*.

Lord Mansfield. Are there any counſel upon either ſide?

Mr. Solicitor General. Yes, my lord, there are counſel on both ſides. I am counſel for the defendant.

Mr. Bearcroft. They have filed affidavits for the defendant; if they have any thing to ſay in mitigation they may proceed now.

Mr. Solicitor General. We have not the ſmalleſt objection to offer what we have got to ſay to your lordſhip.

Mr. Bearcroft. My lord, I would ſuggeſt to the court, that the judgment of this cauſe was put off, on the application of the defendant, that both proceedings might come on at the ſame time.

Lord Mansfield. The matter of the libel will come when we have diſpoſed of this; we will go on with this, as the judgment muſt be ſeveral and diſtinct.

Mr. Solicitor

* Guilty of the ſecond and third counts for the aſſault.

Mr. Solicitor General. I conceived I was to attend your lordſhips this morning upon the whole of the caſe of lieutenant Bourne.

Lord Mansfield. We may hear them both together, but the judgments muſt be ſeveral.

Mr. Erſkine. My lord, I moved your lordſhip that Mr. Bourne ſhould not be brought up for judgment upon the libel, upon which he let judgment go by default, he not having then been tried for the aſſault. I moved ſpecially he might not be brought up to receive judgment for the libel, as it is impoſſible to ſeparate one caſe from the other; the court then, in great liberality, and great indulgence, allowed it to ſtand over. As your lordſhip ſays the judgments may be ſeparate, but we cannot diſcuſs them ſeparate.

Lord Mansfield. Go on, and read the information and the libel.

After the information and libel was read, Mr. Solicitor General proceeded to argue for the defendant.

Pleaſe your lordſhips to favor me as counſel for the defendant, Mr. Bourne, who comes before the court for having publiſhed a paper which your lordſhips have heard read; and for being guilty of an aſſault upon Sir James Wallace, in which indictment your lordſhips will find, as the learned Judge has ſtated it, he was found guilty,

This crime is laid various ways. In the firſt inſtance, charging Mr. Bourne with an aſſault, with intent to kill and murder Sir James Wallace, which my learned friend abandoned in the opening, and of which the party was acquitted,

and

and he ſtands now before the court convicted only of a *common aſſault.*

When I ſay a common aſſault, I don't mean to miſlead the court in any of the circumſtances that ſhall come before your lordſhips upon the affidavits upon either ſide.

It was an aſſault given by a gentleman in a military ſituation and rank.

Sir James Wallace was of the ſame profeſſion, in a naval ſtation, and under whoſe diſcipline and command it is very certain Mr. Bourne has been.

In my preſent ſituation, both in reſpect to the libel and aſſault, it is not competent to me to ſtate that Mr. Bourne is a perſon innocent before the court—certainly not; it is however competent to me to mention ſuch circumſtances as have formed an exceedingly difficult and delicate ſituation—Perhaps the moſt delicate and difficult that can occur within the compaſs of the human mind; that is, where the circumſtances are ſuch as to create a conflict between that duty which a man feels he owes to *himſelf*, and that duty which he owes as a *ſubject* to the *law* of his country.

My lords, in the latter ſituation I muſt ſubmit that Mr. Bourne has offended; becauſe, my lords, the moſt inſulting language, the bittereſt expreſſions—any ſpecies of the moſt opprobrious, inſult, certainly is not a *juſtification* in a court of law for an aſſault.

My lords, when I think of this law, and think of the caſes to which it has been applied, and to which it muſt be applied by your lordſhips ſitting here, I cannot help exclaiming with the young man in the ſcripture, "It is a hard ſaying, who can bear it?" The law is ſo, and by the laws

of

of this country, this gentleman ſtands before your lordſhips to be judged.

My lords, this gentleman is repreſented to me as a young man very hopeful in his profeſſion, much reſpected and honoured, and never more reſpected and honoured than at this moment; his friends, by whom I know the moſt ample teſtimony is given, even after all that he has done, adding to it only all that he has ſuffered, even at this moment, no man is more beloved, honoured, and reſpected by his corps—I have ſeen the moſt ample teſtimony of their opinion of the propriety of his conduct even in this inſtance, which the law condemns.

My lords, he comes to have his caſe decided upon by perſons, whom however accurate may be their knowlege of the laws, the ſtrict principles, and the neceſſity of their application, they are perſons who have commerce with the world, whoſe minds are ſtored with every liberal and every ingenuous ſentiment, who know what is in man, and who would not expect a man whoſe life is honoured, and whoſe very being depends upon his ſpirit, to be ſo abject in his mind, as to ſuffer himſelf to be degraded throughout the world, without ſhewing a ſpirit of reſentment.

Mr. Bourne had the fortune, the *misfortune*, as it ſeems, now, to be under the command of Sir James Wallace, who was the Captain of, I think, a ſhip called the Warrior, that went abroad during the courſe of laſt war to the iſland of Jamaica.

It was upon that ſervice, and upon that occaſion, the ſeed of all this miſchief was ſown.

My lords, I will not go minutely into all the circumſtances of this caſe, as they are told in the affidavits, your lordſhips will have them read, but my

my lord, they contain ſuch a hiſtory of the conduct of Sir James Wallace, that I had much rather your lordſhip ſhould take it from the oath of witneſſes, than from the ſtating of any advocate.

I know nothing of Sir James Wallace—I am ſure I don't mean to traduce him, he may be a man of eminent character, merit, and virtue, and there may be nothing exceptionable in his whole conduct, for what I know, except what may be imputed to him reſpecting Mr. Bourne—But, my lord, if this ſtory is not all fiction and invention, there never was a ſuperior officer that ever ſo conducted himſelf to any perſon of the port and figure of a gentleman—bred in an honourable profeſſion, and not permitted, from the very duty of that ſtation, to provoke him.

Unmerited and unprovoked your lordſhip will find the conduct of Sir James Wallace to be thus—aſſaulting Mr. Bourne with every menacing look, with every indecent expreſſion, and with every threatening geſture, he came holding his clenched fiſt before him, running it from time to time in his face, as it were, and commanding him for no offence, that this gentleman knows, and for no offence, that I can find any body can ſtate, commanding him never to walk upon the ſide of the quarter-deck of the ſhip upon which he was walking; that was his order—"You are never to do it, and do you dare diſpute my orders?"

It was his duty in that ſtation to obey, and not to mutiny; but I am told by thoſe who are the beſt judges of it, that this conduct was ſuch a degradation, and ſuch an inſult, that if Mr. Bourne patiently and quietly ſubmitted to it, it was enough to ruin his character as an officer.

Your

Your lordſhips know by the etiquette of this profeſſion it is ſo—perhaps the inſult offered might appear ſmall in the eſtimate of a porter, or low man; but it is ten thouſand times worſe than death to a man of honor; your lordſhip knows that a man of honor is not more diſgraced in his character, his fame, or his memory, by having his head cut off, or being ſet in the pillory, than by being thus diſgraced—Your lordſhips know an inſtance I believe of a great prince once caning a general officer, which diſgraced him, under the idea that that was a ſort of inſult to a military man.

That conduct, which I underſtand firſt of all began upon the part of Sir James Wallace againſt Mr. Bourne, is infinitely worſe than any thing that could poſſibly be done by a ſeverer puniſhment. Your lordſhip, I am told, will find this ſort of conduct exiſted time after time, day after day, week after week, during the whole of the voyage; your lordſhip will have the hiſtory of Mr. Bourne's remonſtrances upon the ſubject, and his inability to produce an explanation, apology, or any ſort of ſatisfaction, till he came to England.

I cannot defend this ſubject of duelling as a moraliſt, much leſs as a lawyer,—I know I cannot; at the ſame time I know it is the concurrent opinion of all that have moſt attended to this ſubject in Europe, that it is not poſſible to prevent the exiſtence of it in certain caſes—it cannot be done. I know very well a great prince (which your lordſhips will recollect) the preſent king of Pruſſia, ſaid it was a ſubject worthy of all the powers in Europe to hold a congreſs upon, to ſee

if they could prevent a cuſtom which ſpills the beſt blood in the world. It cannot be done—I doubt whether it ought to be wiſhed it were done, and whether its abolition would not produce more diſorder more outrage, or affront, and whether it would not produce intolerable miſchief if it was prevented. But it cannot be done; your lordſhips I am ſure will go along with me in thinking, and your lordſhips own experience knows inſtances of it, that it is as impoſſible for a perſon of rank in the army or out of it, if they have been in the army, to bear an affront degrading to his honor, and conſequently inconſiſtent with all his future hopes and expectations, as it is for a wiſe man to commit ſuicide or any other crime.

It is now for your lordſhips to conſider Mr. Bourne's conduct upon the whole of this caſe. Your lordſhips will ſee whether Sir James Wallace's conduct juſtified it, and whether he did not deſerve ſome explanation and apology from Sir James Wallace, or that Mr. Bourne was undone.

Your lordſhips will obſerve too, that the fact preparatory to the libel of which Sir J. Wallace complains, was an inſinuation againſt Mr. Bourne in a point that if he conſented to admit that inſinuation as true there was an utter end of him; for, my lord, Sir James Wallace, by a publication of a letter with his name ſet to it, which I am going to read to your lordſhip, was that which provoked Mr. Bourne to anſwer it, it is in the Morning Herald of the 22d or 23d of December, 1782, there appears this paragraph or reference, ſigned J. Wallace.

" Mr.

" *Mr. Editor,*

" UPON my arrival in town yeſterday, I was informed a publication had appeared in your paper of Monday laſt, caſting very pointed, ſcandalous aſperſions on my character, of which, from ſome late tranſactions, I ſuppoſe Lieut. Bourne of the marines to be the author; the whole of Bourne's ungentleman-like behaviour, which I have laid before the Admiralty, is too long for a newſpaper publication, I ſhall therefore only ſay, that he has never *once come to the point*, either at Jamaica, Bath, or London, and if he had, I can demonſtrate that I was prepared for him at each place, and might have prevented all his vain boaſtings and falſe aſſertions.

Dec. 20th, 1782. JA. WALLACE."

Your lordſhip ſees by this paper that it refers to a ſuppoſed prior publication; that prior publication I have an affidavit of Mr. Bourne declaring he never wrote it; that he never publiſhed it; that he never knew of it; and, in truth, he is perfectly as innocent of it as your lordſhip, to whom I am ſpeaking.

Then your lordſhip ſees what ſort of a provocation this is upon the part of Sir James Wallace, who begins the libel as between him and Mr. Bourne.

Your lordſhip cannot read this paper, nor will my friend deliver his ſentiments and criticiſms upon it, as if this was not a direct charge of cowardice upon Mr. Bourne, his good ſenſe will diſdain it; I think when Sir James ſays Bourne never came to the point, either at Jamaica, Bath, or London, and if he had I was prepared for him at each place that admits of no other interpretation but this, Mr. Bourne has abuſed me in the newſpapers—

that is the road he chuſes to proceed in—had he choſe to attack me as a gentleman I was ready at Jamaica, Bath, or London; but he is a coward, and a mean daſtardly fellow, he never durſt come to the point with me any where, therefore I will poſt him as a liar and vain boaſter, who is capable of falſe aſſertions. This is the language of this paper.

My lord, this is the firſt beginning of the libel. I don't ſay in point of law this publication is a juſtification before your lordſhip of Mr. Bourne hitting Sir James with a ſtick, but if Sir James Wallace, or any man alive, had admitted himſelf the publiſher of ſuch a libel upon a man of honor, and that man had knocked him down never to riſe again, I am perſuaded there is not a man of honor or ſpirit in the kingdom would have blamed him.

I don't mean to ſay your lordſhip muſt not conſider it an aſſault, that the law of England will not juſtify him in; but ſuch indulgence the law will give at leaſt in the adminiſtration of it to the infirmities, and more to the generous feelings and ſentiments of a man, without having which he don't deſerve to live and breathe in common air, that it is impoſſible for any man alive to think the worſe of him for what he has done.

Now I will aſk your lordſhip, ſuppoſe Mr. Bourne had ſubmitted to this, an officer, a ſoldier, a man living in his profeſſion, and hoping to riſe by it, and he had paſſed it by—that Sir James Wallace ſays to all the world—this man talks of Bath, and of his proweſs, he never dared come to the point with me—I was always ready for him, and I chuſe to publiſh it to the world—does not your lordſhip know that no one officer

officer could have ranked with him, and he muſt have been drummed out of the corps inſtantly, and never have been ſpoke to afterwards—it could not have been avoided.

Then, after this, Mr. Bourne writes a letter, ſtrong, paſſionate, intemperate, and juſt the ſame as any man, whoſe mind was boiling with reſentment; and he could not do otherwiſe, if he had the feelings of a man excited by Sir James Wallace's publication, which was the moſt inveterate, and the moſt keen and pungent that could poſſibly be to a man of honor; then he writes that which the law reprobates—in my apprehenſion, it is that which any man in his ſituation would have done.

Whether I ſhould have done it or not I don't pretend to ſay, but this I know, that if I had not done it I ſhould be blamed for ever; I could never go into ſociety but I ſhould think that I ſaw in the countenance of every man I met my condemnation and confuſion—I ſhould ſo have felt.

So it ſeems Mr. Bourne thought before he ſtruck Sir James Wallace, and committed this aſſault. I dont mean to ſay that he can be at all juſtified in this court for it; as to the ſtripes he gave Sir James Wallace, whether they were with a great ſtick or a little one, or whether it was like a bruiſing match among porters, which it certainly was not, it is a very different caſe.

Now your lordſhip muſt conſider what ſituation he is in; with reſpect to this, your lordſhip will find in the hiſtory referable to it, Sir James Wallace was conſtantly cauſing, and neceſſarily exciting him to a conduct like this unfortunate and unhappy as it is—it could not be otherwiſe—I hope I have ſhewn—your lordſhip I am ſure muſt

feel

feel he was called upon to take ſome earneſt, ardent, and vigorous means to rid his character of a blot that would totally overthrow it with obſcurity for ever if he did not do this: he appeals to him from time to time, and aſks for an explanation of his conduct; at Bath I think your lordſhip will find that when he aſked for an explanation, Sir James Wallace ſent him word that he had ladies with him; after that he met him in the ſtreet, and he tells him it is extremely ſtrange he will not come to an explanation with him—Sir James Wallace pulls out a piſtol from his pocket and cocks it, and ſays, if you ſpeak to me I will blow your brains out immediately; Mr. Bourne ſays, this is not the way among gentlemen, and deſired he would meet him in a proper way, according to the laws of people of honor—nothing of that ſort was done.

After that endeavour, which made a great noiſe in the profeſſion, to explain it in the way in which theſe gentlemen alone would think proper to explain things, theſe publications are delivered to the world, their minds were agitated upon the ſubject, the friends of Sir James Wallace taking his part, and the friends of Mr. Bourne taking his part.

Mr. Bourne caſually meets Sir James Wallace in the ſtreet, and it appeared upon the trial, that Mr. Bourne accoſted him with ſome decency, walked with him a few paces, and in that walk ſome converſation paſſed, ſuch as your lordſhip would expect. Sir James Wallace was at ſome diſtance, they met juſt preparatory to the aſſault, he treated him with neglect and contempt in the ſame manner he did upon the trial, as I very well remember; upon which Mr. Bourne, feeling that he

was

was in that ſtate, reprobated by Sir James Wallace to all mankind as a coward, he thought there was no way in the world but to inſult Sir James Wallace, and to declare to all the world, I muſt either die, or I muſt live with ſome credit; I muſt have an open, unequivocal, public explicit declaration, for ſo the world will take this fact; I will in truth inſult this gentleman by ſtriking him, for he will not deliver me from the imputation of being a coward, but by my doing an act which muſt, in its nature, neceſſarily bring my courage, honor, or ſpirit to the teſt.

My lord, I know very well this way of putting the caſe will naturally open to conſequences of which I am not at all afraid, though I know your lordſhips will ſay this tends to the greateſt violation and breach of the peace.

Court. This gentleman is indicted for a common aſſault—you make it a great deal worſe by the opening.*

Mr. Solicitor General. My lord, I cannot ſtate to your lordſhip Mr. Bourne's cauſe without ſtating it fully, I cannot ſtate one half and ſuppreſs the other half, he would not wiſh one tittle of it to be ſuppreſſed, for ſorry as I know he is—very ſorry—extremely ſorry that it ſhould happen, he ſhould be obliged to put himſelf in a predicament to offend the laws of his country; to offend which I believe he is as much unwilling as any man upon earth, yet he does conſider, and your lordſhip muſt I am ſure allow, he cannot but conſider the ſentiment of honor, ſo invinſible and ſo abſolutely inſaperable from him, that he muſt be a man of honour, let him ſuffer ever ſo much, he muſt live with a view to noble ends, and to proſecute thoſe ends by theſe means, or he cannot live at all. That

* The language of the court, previous to ſentence, ſhews however that he was not *puniſhed* for a *common* aſſault.

That is his caſe—he ſtruck Sir James Wallace and Sir James Wallace appeals to the laws of his country, and has brought him to this place; I don't blame him for it, Sir James Wallace was judge for himſelf; that Sir James Wallace has judged erroneouſly I am ſure I don't care to inſinuate—he is the beſt judge of his own propriety of acting; but at the ſame time he muſt permit my client to judge of his.

Every body knows the fact of his having ſtruck Sir James Wallace—of his having been indicted, tried, and convicted for it; all this every man in the kingdom knows, and yet, with a knowledge of all theſe facts, I have the unanimous judgment of his corps, ſigned by all the volunteers, upon the ſubject, of fifteen or ſixteen general officers, expreſſing I believe their great reſpect of the character of this gentleman; I don't mean that they have expreſſed their approbation of any violation of the laws of their country, or any thing like it—nothing of that ſort, but expreſſing their great love, attachment, and regard for this gentleman, as a man of honor, who, if he has been betrayed into a violation of the laws of his country, has been betrayed into it by the ſentiments of honor.

This is the caſe that will be proved by affidavits—I will not trouble your lordſhip any longer for this reaſon, I ſhall be followed in this caſe, which is very momentous to my client, by a learned friend of mine, who feels more accurately than I do upon all ſubjects, who I am ſure will expreſs himſelf with much more pathos upon the ſubject, he having been an ornament to his country in both capacities, belonging to the corps of Sir James Wallace and Mr. Bourne, though

though it is now come to his turn to adorn another profeſſion; he is capable of ſpeaking with more accuracy and force, and I do a great deal of injuſtice to Mr. Bourne to detain your lordſhip and the court any longer upon it.

The affidavit of Mr. Bourne read, near the concluſion of which Lord Mansfield aſked Mr. Erſkine if he had ſeen the affidavits before they were filed.

Mr. Erſkine. Yes, my lord, Mr. Solicitor General and myſelf have both ſeen them.

The affidavit of George Paris Monke, Eſq. read.

The affidavit of Auguſtus Markett, Eſq. third Lieutenant of the Warrior, read.

The affidavit of Charles Green, Eſq. Captain of Marines, read.

Lord Mansfield. Is it certain that you have read theſe affidavits.

Mr. Erſkine. Yes, my lord.

Lord Mansfield. How can they dare to make an affidavit in this court giving an opinion upon the ſubject.

Affidavit of John Webber, Eſq. Captain of marines, read

Lord Mansfield. How can he dare make an affidavit to tell the court his opinion upon it—it is impoſſible you can ever have read theſe affidavits—it is an inſult upon the court.

The affidavits of Lawrence Deſborough and James Hamilton, Eſqrs. Captains of Marines, read.

Affidavit of the Earl of Cork was then called for.

Lord Mansfield. Now we are to have the Earl of Cork's opinion.

The affidavit of James Smith Bar, printer of the Morning Herald, to prove Sir James Wallace's letter, as ſigned by him, was inſerted in the Morning Herald.

Affidavit of Arthur Collins, Eſq. Major General of Marines at Plymouth, read.

Affidavit of James Hawker, Eſq. Captain of the Iris, read.

Affidavit of —— Bouchier, Captain of the Le Hector, read.

Mr. Erſkine. I have the honor, my lord, to be of counſel for Lieutenant Bourne, who now ſtands before your lordſhip for judgment; and my lord, under all the circumſtances of the caſe, as it is cloſed by the affidavits which have been read, however improper they may be in ſome parts, which I ſhall ſpeak to bye and bye, my principle hope of a mild ſentence is built upon the perſuaſion that ſtill more will be ſecretly felt by the court than may decently be expreſſed from the bar, for although I am convinced your lordſhips have all thoſe nice ſenſations which diſtinguiſh men of honor from the vulgar, and your genuine feelings for the defendant muſt be rather feelings of compaſſion, and approbation than reſentment, yet you cannot, ſitting upon that bench, clothed with the robes of magiſtracy uſe the ſame language as I could freely inſure from your lordſhips for my client, in any other place than this.

Unfortunate for this gentleman who has this caſe depending before your lordſhips in this court, where your lordſhips are bound, as judges of the law, to conſider that as a crime in him againſt the ſociety in which he lives; which if he had not committed, that very ſociety would have expelled him like a wretch from all communion; and you muſt ſpeak to him in words of

reproach

reproach and reprobation for doing that, which if he had not done, your lordſhips would have ſcorned to have ſpoke to him as a private man.

This is a harſh and a ſingular ſituation—in other caſes, my lord, where a ſubject, in diſobedience of the laws, becomes an aſſertor of his own rights, or the avenger of his own wrongs, he can have no poſſible plea of mitigation—he can have no anſwer to make when he is told by the judge who puniſhes him, Sir, the law which you have broken would have protected you in obedience to it; the law would have reſtored to you that property which you have yourſelf retaken by force. But, in this caſe, as my learned friend, the Solicitor General, has ſtated, ſo very whimſically is our ſociety conſtituted, that your lordſhips cannot by your judgments protect men in their obedience to that law for the breach of which you puniſh them.

I ſay your lordſhip cannot afford this protection, becauſe you cannot grant an attachment againſt public opinion, or inſure to a man he ſhall not be excluded from ſociety, or what is as bad, forfeit his reſpect and eſtimation only for making the law of ſociety the rule of his conduct, as that is a fatal error in the conſtitution of community, but it exiſts in our own; ſurely that law which compoſes the univerſal voice of community ought rather to be abrogated as erroneous in principle, or be enforced by ſuch regulations as exclude the poſſibility of its being thought honourable to diſobey.

But I beg leave to ſay, this diſhonourable purpoſe cannot juſtly be maintained by the conviction of parties, or the puniſhment of a few, till by wiſe laws a general change in the minds of men can be effected upon the ſubject of duelling. I think with my worthy friend, who ſpoke before

me, that the practice of private duelling, and all that ſort of behaviour that leads to it, is a high offence againſt the laws of God; and I agree with that great prince, who mentioned it as deſtructive of good government amongſt men, a practice generally unknown to the moſt refined and heroic people, till the revolution of times and manners introduced it into the world, a practice through which a moſt amiable man may be loſt, by an ignominious death, or the ſtroke of mere blind chance.

Though I feel all this as a chriſtian, and humane man ought to feel, yet I am not aſhamed to acknowledge, that I had rather be pilloried in every ſquare in London, than obey that law, when the public, univerſal voice was in the other ſcale. Every man that hears me, feels what it muſt be, to exiſt without the reſpect and good opinion of the world which we live in. No matter what principle it is built upon. Life itſelf is worſe than any thing the laws can inflict; the cloſeſt dungeon to which a tyrant's ſeverity can ſend an offender, is better, with the ſecret approbation of thoſe that ſent him there, than liberty, with the rage, contempt, and ſcorn of the univerſe.

In the little I have to ſay, and it is not much, my ſingle aim muſt be to convince your lordſhips, that the defendant was placed by the proſecutor, in a ſituation that left him no alternative, between perſonal diſgrace and infamy, and a perſonal breach of the law, of which humbly he acknowledges himſelf guilty.

The generous feelings of a man of honour, jealous of his reputation, animated all his intercourſe with Sir James Wallace, and I beg leave to ſay, no one of thoſe feelings has he violated, beyond thoſe rules of military ſubordination which

which bound him. The municipal laws of the kingdom, are the laws binding upon ſoldiers.

My lord, the character of the defendant is ſtated to your lordſhip by theſe affidavits, and in many more behind, which were not read, whether they are the moſt material in this caſe for Sir James Wallace is not for me to diſpute. His character has been juſtly and honorably acquired in the ſervice of his country. And as lieutenant Bourne, appears here before your lordſhip, as an obſcure man and unknown, and Sir James Wallace, a man well known by the ſervices he has done his country; it is eaſy to ſee, in the minds of men, how the balance would turn, therefore we thought it our duty to file the affidavits of thoſe officers with whom he ſerved, and under whom he ſerved; they all give an account of his character, his behaviour, and accurate diligence of his conduct, which are ſufficient to lead your lordſhips to think, he would not, unprovoked, have been guilty of that, which muſt have been a breach of diſcipline in this caſe.

Your lordſhip has heard two affidavits, which make him an object for the compaſſion of the court. The man that has behaved nobly muſt not be puniſhed, unleſs there is an abſolute neceſſity for it.

Lieutenant Markett ſaw this Mr. Bourne, this gentleman that would not come to the point, ſaw him in the action with the French fleet, upon the 12th of April, quartered in a part of the ſhip, the moſt expoſed to the fire of the enemy, and he acquitted himſelf, with that noble and ſpirited execution of his duty, as juſtly increaſed the ardour of the men, and made him the juſt admiration of all the officers on board.

Lieutenant Middleton ſwears, that in all the calamities of Le Hector's unfortunate voyage from

Jamaica,

Jamaica, "in a long and desperate action, with two French men of war, during which, as well as in a succeeding scene of sickness, thirst, and hunger, in a sinking ship, a considerable distance from any land, and precluded from any prospect of deliverance, his cool and unabated intrepidity inspired courage in every person around." He shewed a most spirited conduct, and a manly resolution. He contributed to the preservation of all, by encouraging their perseverance.

A man in the possession of such a character as this, would suffer no man to tread upon him unjustly. Character is the great and sacred pledge which God has given to every man that deserves it, and he deserves every sort of reproach and disgrace, who parts with it for a light cause.

The prosecutor and his counsel, that heard the affidavits read, and heard the panegyric upon Mr. Bourne may impute it to ostentation and vain glory, I desire them to remember, that modesty, indeed, represents good actions, upon a principle far better, where the approbation of others is blended with it; that principle does not apply to cases where character is traduced by slander, and held forth as dishonourable.

With this character, justly acquired, in the manner I have stated to your lordships, lieutenant Bourne came on board Sir James Wallace's ship, anxious to serve his king and country, in very perilous times, and feeling he could serve them, because he had that within him, which told him he was worthy of the place in which he stood.

My lord, I have seen but one part of the prosecutor's affidavit, and I cast my eye accidentally upon it this morning, and the first charge we make in our affidavit upon the prosecutor is this.

That he gave out an order, as captain of the Warrior, confining this gentleman, Mr. Bourne, individually,

individually, to one ſide of the quarter-deck; not a general order that Sir James Wallace choſe one part of the deck to himſelf, but an order, proſcribing lieutenant Bourne by name, telling him, as if his preſence was a contagion and contamination, no longer to walk on that ſide of the deck on which he, the captain, was.

Sir James Wallace has ſet forth in his affidavit, that it is a part of the diſcipline of the navy, the captain has a right to make ſuch orders; undoubtedly he has, and may order every officer, whoſe duty it is to walk upon the quarter-deck, to go to the top of the higheſt maſt in the ſhip, but he cannot do that without a cauſe, and ſubjecting himſelf to a trial by a court martial, and the infamy that belongs to ſuch conduct*. I had the honor, not as my learned friend ſtated to the court, as any ornament, but I had the honor to ſerve in the navy, under a man who is an ornament to his country; a gentleman the moſt accompliſhed this world can produce; a man who has the honor of being nearly allied to your lordſhip. I ſailed with that man, and there I learned what ideas ought to be entertained in a ſhip. Every reſpect a man can pay to his neighbour, that gentleman always paid to me, and though I was placed on board that ſhip, and taught to reverence him of as my father, and do to this hour when I ſpeak of him, yet, I feel, if he had treated me in this manner, that Sir James Wallace has treated Mr. Bourne, I would have ſought him through all created ſpace till he had given me ſatisfaction. It is impoſſible in the nature of that man to ſuppoſe I could exiſt without doing ſo.

I am ſure Sir James Wallace could bring no man that valued his reputation to ſay an officer is

* See note, Nppendix, page 30.

is to be proſcribed, and that not by a general order for all the officers in the ſhip, but a ſpecial order againſt a particular man, by name, without a cauſe being ſtated for it.

My lord, if lieutenant Bourne had ſubmitted to that, he could not have walked upon the ſide of any ſhip, he could have ſpoke to no man whatſoever, in the capacity of an officer, his exiſtence as an officer, and his occupation was gone. Is this all the inſult that Sir James Wallace gave him there? Is it not ſworn by the defendant Bourne? Is it not ſworn by lieutenant Monke, who ſtands without reproach upon his character, as a naval officer, in the ſame ſhip? Was not he preſent when Sir Sir James Wallace came out of his cabin, with his eyes ſtarting fire, clenching his fiſts with terms of reproach, in the teeth of the gentleman before your lordſhip*.

My lord, putting the infirmities of human nature out of the queſtion, which are ſo ſtrong I profeſs I almoſt forget myſelf when I am ſtating them here, what muſt that man have felt, and what does he deſerve of your lordſhip, for his conduct upon that occaſion? What I mean to ſhew your lordſhip is, that this gentleman has been guilty of a common aſſault, and not of any thing improper in the navy. Lieutenant Bourne's behaviour upon this occaſion, has been all humility and meekneſs. Sir James Wallace could have no juſtification for his conduct. I will venture to ſay, it is impoſſible he can offer to your lordſhip any reaſon for that conduct. If lieutenant Bourne had inſulted him as a private man, ſurely it was not very manly, or conſiſtent with that character Sir James Wallace has ſo juſtly obtained

* See lieutenant Monke's affidavit, Appendix, page 9.

obtained in the world, to reſent it as he has done. The defendant could not, without mutiny and death, have diſputed his captain's orders. If the defendant had committed any breaches of diſcipline in the ſhip, were not the laws of the navy open to Sir James Wallace for redreſs, Mr. Bourne was ready to ſubmit to thoſe laws, and during a long and painful voyage, he bore all the dreadful treatment I have ſtated to your lordſhip. If Mr. Bourne, upon the arrival of the ſhip at Jamaica, had done what the affidavits have ſtated him, at a ſubſequent time to have done, I ſhould not have been the firſt to defend him. He appeals to the admiral, ſtating the conduct of Sir James Wallace on board his ſhip, and requires a court-martial upon himſelf, conceiving Sir James Wallace thought him guilty of ſome breach of diſcipline on board the ſhip, therefore he calls upon the admiral, the commander of the fleet, to bring him to a fair and regular trial. If he had done any thing in the character of an inferior officer, for which the law could have puniſhed him, he would not have called for a court-martial.

Inſtead of that redreſs which he was intitled to, he was removed by the admiral into another ſhip, he was no longer then the immediate ſubordinate of Sir James Wallace.

I am ſure it would be indecent to ſpeak in juſtification, or in mitigation of that part of his conduct, which is not before the court, now it cannot be ſaid the ſubordination of ſervice extends to ſuch a matter as this, much leſs when a man is removed from under immediate command of his officer; he is no longer on board a ſhip, but meets Sir James Wallace on ſhore. He is not now before the court, for a breach of the peace at Jamaica, and I may ſay he demanded there, that ſatisfaction

which the cuſtom of the world however erroneous, thinks he had a right to demand of another. His temper could not be collected upon that occaſion, and he tells him, that he required that ſatisfaction of him; Sir James Wallace, in his affidavit, ſwears he told him, he ſhould hear from him, my lord, he did not hear from him, but he heard from many others, what Sir James was conſtantly communicating, that lieutenant Bourne was a baſe, unworthy ſcoundrel, not fit to live in this world, that he heard from every mouth, and in no company did he go, at Jamaica, nor at Newfoundland, but he found himſelf the object of that reproach and ſlander, which Sir James had ſpread upon him.

There are ſome injuries which Chriſtianity does not call upon men to forgive or forget, for God has not laid down that human nature is capable of doing it.

He ſought Sir James, not to ſtab him, not to piſtol him, but that he might explain his conduct, that if it admitted an apology he he might give it, if not, that it ſhould be ſettled according to the laws of honor, which I hope your lordſhip will forgive me for the indelicacy of alluding to, in ſuch a court as this. At Bath he ſends, to Sir James Wallace, a meſſage without a name, the excuſe is, that Sir James Wallace had ladies with him; Mr. Bourne did not chooſe to inſult the ladies, or to do any thing by which the matter might become more known, but when he found Sir James Wallace would not explain his conduct by a meſſage, without fighting, he wrote firſt that note, in which he told Sir James Wallace, if he perſiſted in not ſeeing him, it would only confirm him in that opinion which he had, of the diſhonourable character

character that related to him. The anſwer was very well; he writes another letter of the ſame ſort, the anſwer was, very well.

My lord, lieutenant Bourne had done enough; and if Sir James Wallace had been ſilent upon that occaſion, or thought fit to make the diſcipline of the ſhip his defence, I am afraid I ſhould have no ſort of plea of mitigation here. But he went round ſlandering the character of Mr. Bourne, upon which Mr. Bourne ſaw he had no redreſs, but to take an opportunity of meeting him, and inſiſt upon an explanation. He met him in the ſtreets of Bath, not to ſtrike him, but accoſt him, as one gentleman accoſts another, by deſiring an explanation of his conduct; Sir James Wallace anſwers him with a piſtol; he claps a piſtol to his breaſt—the defendant is not the man that breaks the peace—the defendant's reply is for God's ſake, Sir, do you think this is the place for producing piſtols—that ſhould be in a more private place, I only come for an explanation.

Sir James Wallace leaves Bath, and now I come to that which I think requires the attention of the court.

Mr. Bourne, but for this letter, which appeared in the news-papers, ſigned James Wallace, had moſt undoubtedly vindicated his honor, and if he had gone further than that, I proteſt I ſhould have thought he was an object of reproach. He had done enough when he inſiſted upon Sir James's coming to the point, he met him, and the conſequence of the meeting was, he reſiſted him by a piſtol.

Sir James Wallace, in conſequence of what paſſed at Bath, writes this letter, which the Solicitor General read in court*. This part is remarkable; he ſays, firſt of all, lieutenant Bourne

* See copy of the letter, Appendix, p. 7, and 16.

is the author of the anonymous paragraph, but he does not ſend to lieutenant Bourne, to know whether he is the author of it; he does not take pains to collect evidence that he was the author, but preſumes it at once, becauſe he knows in his conſcience, there was great reaſon for Mr. Bourne writing ſuch a paragraph, and therefore he ſets down to write this letter, in anſwer to an anonymous paragraph, and he thinks fit to fix on Mr. Bourne. In this letter, Sir James Wallace ſays, "I ſhall only ſay, he has never once come to the point, either at Jamaica, Bath, or London, and if he had, I would have demonſtrated, I was prepared for him at each place, and would have prevented his vain-boaſting." If that is truth, there is an end of the defence. If Sir James Wallace had ſaid, I think it neceſſary to inform the public, that lieutenant Bourne, an officer in my ſhip, conducted himſelf with indecency to me, in violation of thoſe rules of ſubordination and diſcipline, I, as an officer, held ſacred, I feel myſelf brave enough to refuſe to meet him; I think my character is ſufficient to vindicate me, in any matters that relate to the diſcipline of the navy. There would have been an end of Mr. Bourne that is, if Sir James Wallace could have ſaid that with truth. He does not ſay that Mr. Bourne was purſuing him without an adequate cauſe of quarrel. He does not ſay, that Mr. Bourne offended againſt diſcipline, and then, keeping up to that, he had thought fit to quarrel, and follow him to Bath. He does not do that, which is a complete defence, but on the contrary, he ſeems to admit an expectation, that lieutenant Bourne would call on him, and he throws the ball back to him by the defiance

fiance of the challenge, and ſays, I was always prepared to meet him, but he would never come to the point, either at Jamaica, Bath, or here. He makes no plea of diſcipline, and ſurely my lord, if in Sir James Wallace's mind, he had thought the only defence was in conſequence of the diſcipline of the ſhip, what can your lordſhip ſuppoſe he would not have not held forth to the public? What can be better evidence to the world, when he called the public to give judgement upon the quarrel between them?

This letter is called a libel, let me put this in the caſe of a civil action. Mr. Bourne's anſwer is one of the moſt meaſured anſwers I can poſſibly conceive, not to make uſe of any one opprobrious epithet to Sir James Wallace, every thing that is ſaid to be opprobrious, is only ſtated facts to the public, whom Sir James Wallace thought fit to make the judges. He ſat down merely to write what paſſed; if he was to anſwer the letter at all, he muſt anſwer it truly; if he wrote thoſe private reproachful letters to Sir James Wallace, they were wrote in private, and never meant to be public, and Sir James Wallace publiſhing falſe letters, and falſe accounts, induces him to write thoſe public letters.

Theſe letters, however libellous they might be, were never intended for the eye of the public. Mr. Bourne writes in anſwer to a letter ſigned James Wallace. If it had not been his, Sir James Wallace might have ſent him word, that it was not inſerted by him, or his order. Sir James Wallace is conſcious ſuch a letter might be expected, as appeared firſt anonymous, therefore he thinks Mr. Bourne was the author, when he was not the author.

My lord, if a man will make a private quarrel the object of public attention, and he miſtakes the author of that public quarrel, I put it to the feelings of every man, what is it poſſible for a man to do, but to give a fair repreſentation.

If that repreſentation, when it comes out, appears contumelious, ſo as to make a libel, if not originally intended for the public, it is no libel, becauſe not intended for the public. I do not ſay it would not be a libel upon an indictment, but unqueſtionably it would be no libel upon a civil action.

Mr. Brand, the ſurgeon, brought an action againſt S , for a libel, your lordſhip deſired him to make out an anſwer, and it was found that letter contained a libel upon S it was a juſtification, and he was entitled to a verdict; for though it might be a violation of the public peace, no man is entitled, as an individual, to damages, where he provoked the injury.

Sir James Wallace is as much out of the queſtion as if he had no exiſtence, and when your lordſhip looks at this letter, your lordſhip will ſee what puniſhment a man deſerves, who merely violates the public peace, by communicating to the public by letter, that which he had no occaſion to do, if not forced to it.

Mr. Bourne writes to this effect, I find myſelf under the neceſſity to trouble the public in the vindication of my honour. And that I do really believe is the foundation of all this gentleman's proceedings—Upon my arrival in England, I was informed Sir James Wallace was at Bath.

I wrote him the following notes,

I ſhall not read thoſe notes, it is not pleaſant to read any thing that conveys a reproach on another,

ther, but in mitigation of this gentleman's puniſhment, I beg your lordſhip to conſider, he was called out to public view by Sir James Wallace himſelf, and he was only repeating, to the public, that which he could not poſſibly get off from, though it was a libel. He muſt have written the whole truth or nothing.

Need I ſay it in court, his character was utterly undone and loſt, for if that paper of Sir James Wallace, with all his reputation to give it weight, had ſtood without an anſwer from Mr. Bourne, my lord, no officer that knows him, would ever have known him more.

Under theſe circumſtances, I think the libel is mitigated to ſuch a degree, as that the defendant can have little to apprehend from the judgment of the court.

With reſpect to the aſſault, it appears by this very letter, I beg your lordſhip to attend to that. I am ſorry to ſtate a breach of the peace by way of mitigation, it is very aukward. It appears Sir James Wallace had refuſed to anſwer him as a gentleman, yet in a few day after this, Sir James Wallace, without challenging him, or calling him to an account, ſays, this gentleman would never once come to the point. What was the defendant to do, ſays he, I have done every thing I could to bring this gentleman to the point; I have held my cane within five inches of his temple, yet he ſwears that in every company he went into in London, he found Sir James Wallace ſtill propagating that Mr. Bourne was a coward, and never would give him that ſatisfaction his honor required.

Mr. Bourne was defending himſelf againſt that libel, and he was walking with this gentleman who

who ſits by me, and whoſe affidavit is filed*. He had no weapon at all in his hands, Mr. Bourne ſwears, and Mr. Coombe confirms him in that oath, he had not any cane, or ſwitch, or ſtick; ſeeing Sir James Wallace come up, he took the cane out of Mr. Coomb's hand, a ſmall cane, with a white head, and goes up to Sir James Wallace, not like that aſſaſſin the indictment would repreſent, he comes up to Sir James, and accoſts him with much more civility than I ſhould, but he did that from the moſt honorable motives; he ſaid, Sir James, I now deſire you will juſtify your conduct.

Lord Mansfield. I doubt you are miſtaken, that is not according to the report.

Mr. Erſkine. I have read Mr. Coombe's affidavit, and your lordſhip may be aſſured I am not miſtaken in this, Mr Coombe poſitively ſwears, and I beg leave further to ſay, during the trial of the cauſe, we offered Mr. Coombe as a witneſs, and Mr. Juſtice Buller very truly ſaid, his evidence would come in mitigation, though it could not alter the verdict, therefore he ordered us to file affidavits. Bourne takes the ſtick out of Coombe's hand, and ſaid, there is Sir James Wallace, he went up to him with all that ſenſe of injured honor which he had, and ſaid, now, Sir, I inſiſt upon your coming to an explanation. Mr. Coombe did not hear the converſation between them, but he poſitively ſwears there was a minute's converſation paſſed, and that extraordinary converſation was the moſt perfect civility. That Mr. Bourne poſitively ſwears, that Sir James treated him with the ſame contempt, and held him at arm's length as he did before.

Now I will plead for the infirmity of human nature once more. Conſider what the honor of an

* Mr. Coombe, See his affidavit, Appendix, p. 24a

an officer is, and if their honor is loſt, it is their univerſal ruin—conſider what puniſhment a man deſerves when he knew the perſon accoſting him had been injured by him, and yet refuſed him ſatisfaction forty times, but had held him forth in the news-papers, as a perſon that would never come to the point—then the defendant ſtruck him, and it was not till then Sir James Wallace returned the blow.

My lord, you have before you a young military man, jealous as he ought to be of his fame and honor, treated with the greateſt indignity by his ſuperior officer, ſmothering that honeſt reſentment, ſo long as he was under his ſuperior officer's command, and the duty of the military ſervice required that painful taſk; and though he proceeds in criminal oppoſition to the law, but with that I will venture to ſay even here, it was through the generous infirmity in his nature that was cheriſhed by a long eſtabliſhed, though erroneous cuſtom; but Sir J. Wallace holds him forth as not being a man of honor, and by a public letter in the news-papers, aſſerts, that he was always ready to come to the point, if Mr. Bourne would come to the point with him; was not that a defiance and a challenge.—The defendant was ſtung to the ſoul with the matter that he knew would ruin his fame for ever, and Sir James Wallace, having, by the channel of the common news-papers appealed to the public—he appeals in anſwer to that tribunal Sir James Wallace thought fit to apply to—the anſwer is without reproach—it is nothing but a fair, clear, and true repreſentation of thoſe circumſtances which the proſecutor had miſrepreſented.

Sir James Wallace inſtead of replying to that anſwer before the multitude, indicts the defendant as a libeller in this court, for not having patiently ſubmitted to that eternal diſgrace which muſt have fallen upon his name to all poſterity, if he had ſubmitted to that publication unanſwered.

He had ſhaken his cane over Sir James Wallaces's head at Bath, yet here Sir James holds him forth as a coward, who would never come to the point.

Still Sir James Wallace refuſes him all acceſs to his perſon, by which he could come to it, or any explanation could be obtained.

My lord, I am not ſpeaking in juſtification —There was but one ſtep more to put his reputation, which is a jewel to every man, much more of a ſoldier, out of the reach of that ſlander the proſecutor had raiſed upon him, and which he had been ſo long the object of, namely, by fixing that diſgrace upon him which the blow of a gentleman has ever been thought to carry with it, it ſurely renders the perſon that received it liable to every diſgrace, as the proſecutor in this caſe had ſaid his adverſary would not come to the point.

For that act Mr. Bourne thinks there is no apology due to Sir James Wallace, but every reſpect, ſubmiſſion, and humiliation before your lordſhip and the judges of his country. It is the law, and not Sir James he has offended; your lordſhips will therefore put him totally out of your view in fixing the puniſhment, in this caſe, conſidering merely what injury the public ſuſtains by ſuch a violation of the peace, whoever may be the object of it. It would be moſt indecent

decent in me to inſinuate to the court what I conceive to be the extent of that injury, or the proportion of puniſhment due for it. Upon the whole, my client relies upon the juſtice, the humanity, and the honor of the court.

Lord Mansfield deſired the affidavit of Mr. George Coombe to be read.

The affidavit of Mr. William Pearce was likewiſe read.

Lord Mansfield. Mr. Coombe ſwears, from the ſize of the cane he thinks it was not a ſevere beating.—It is proved the hat was cut through, and the leather lining—people don't conſider what they ſwear.

Mr. Solicitor General. I remember it was ſworn it was a common ſmall ſized cane.

Lord Mansfield. How looſe theſe people ſwear.

Mr. Mac Nally. My lords I am likewiſe of counſel for the defendant, Mr. Bourne, I ſhall make but very few obſervations, and be extremely conciſe in what I have the honour of ſubmitting to your lordſhips.

Firſt, my lords, in reſpect to the libel, it appears that the original paragraph, publiſhed in the Morning Herald, was anonymous, and the defendant has poſitively ſworn it was written and publiſhed without his conſent or knowledge. In anſwer to this anonymous paragraph, Sir James Wallace, as appears by the affidavit of Mr. Barr, printer of the Morning Herald, ſends a letter to that paper, avowedly written by him, and bearing his ſignature. He ſends it by Mr. Sleigh his attorney, his law agent, his ſolicitor in this cauſe, and his brother-in-law, as I am informed. This letter has been read to your lordſhips, and your

lordſhips perceive it poſſeſſes every eſſential to conſtitute a libel—it reflects upon the character of the defendant, it holds out a challenge, it tends to a breach of the peace, it dares to throw an imputation of cowardice upon the defendant, for it ſays that he never came to the point; when one ſoldier tells another, that he never came to the point, he can only mean the point of the ſword, and that the meaning of Sir James Wallace might not be miſtaken by the public, he had theſe words, he never came to the point, printed in italics.

Sir James Wallace, my lords, after having publiſhed this libellous, this provoking letter, comes here to ſeek for juſtice, but I truſt that as it muſt appear evident to your lordſhips that he is the original tranſgreſſor, you will not conſider him as having any claim.

My lords, Sir James Wallace has choſen to ſeek for juſtice by indictment, had he come here applying to your lordſhips for an information, I am confident your lordſhips would have refuſed him. I ground my opinion on what I once heard fall from the bench, which confirms me that the court would not have interfered in ſuch caſe as the preſent, and on ſuch a libel, by the extraordinary mode of information.

My lords, I allude to the caſe of Macklin againſt ſeveral perſons who had conſpired againſt him. Mr. Macklin applied for an information againſt ſix of thoſe perſons, but your lordſhips refuſed it againſt two, Reddiſh and Sparks. It appeared that anonymous paragraphs had been publiſhed againſt Macklin in the news-papers imputed by him to Reddiſh and Sparks, which paragraphs Macklin anſwered by a letter, bearing his ſignature; now the circumſtances in that caſe, and in this, are analogous, for in this caſe

Sir

Sir James Wallace has anſwered an anonymous paragraph by publiſhing a letter bearing his ſignature.

Your lordſhip will correct me if I am wrong, I could not procure a written or printed report of the caſe, the point I ſpeak of came in collaterally, but I have it ſtrong upon my recollection, that your lordſhip ſaid, "as to Reddiſh and Sparks, Macklin having appealed to the juriſdiction of the public, the court will leave him to the deciſion of that juriſdiction, and will not interfere by the extraordinary mode of information."

My lords, I truſt that the ſame motives which induced your lordſhips not to interfere by the extraordinary mode of information, in the caſe of Macklin, will in the preſent caſe go very far in mitigation of puniſhment, becauſe the caſes are ſimilar, and your lordſhips ſee where the firſt tranſgreſſion by libel lies, and if you ſhould be of opinion that Sir James Wallace was the firſt tranſgreſſor by libel, I have not a doubt, taking the whole of the caſe into conſideration, but you will alſo conſider that he ſtands culpable for all its conſequences, and of courſe, that the aſſault is imputable to him, as being the original libeller.

My lords, there was a fact which appeared upon the trial, which ſtrongly marks the character of the proſecutor, I ſhall take the liberty of ſtating it to the court, though I do not find that it has been ſtated in the report of the evidence, we have heard read by the learned judge who tried the indictment. My lords, this fact, is, that Sir James Wallace, ſpeaking of Lieutenant Bourne, forgetting the dignity of the court in which he ſtood, forgetting the reverence he owed the judge, and forgetting the

reſpect

reſpect he owed himſelf, as an officer, called the defendant a ſcoundrel—I proteſt, my lord, language does not furniſh me with an epithet ſufficient to reprobate ſuch conduct.

Mr. Juſtice Buller. Do you mean that he ſaid ſo in the courſe of the trial?

Mr. Mac Nally. Yes, my lord, in giving his evidence.

Lord Mansfield. Did he ſay ſo?

Mr. Mac Nally. My lord he certainly did, or I ſhould not aſſert it.

Mr. Solicitor General. I am not ſurprized it was not taken notice of by your lordſhip, Sir James in his evidence certainly made uſe of the word ſcoundrel, but ſo low your lordſhip might not have heard it.

Mr. Mac Nally. The words he uſed were "and he beat me with a ſtick, like a ſcoundrel as he is."—

My lords, the urging this expreſſion againſt the proſecutor is material, and will no doubt make a forcible impreſſion on your lordſhips; the uſe I make of it is this.—If Sir James Wallace could ſo far forget, as I ſaid before, the dignity of this court, the reverence he owed the judge, and the reſpect he owed himſelf and to the defendant, as to call him a ſcoundrel, the natural inference will be that your lordſhips will have no doubt of his oppreſſive and inſulting conduct to the defendant on ſhip board; if he forgot himſelf here, no wonder he forgot himſelf on board his own ſhip, where he was under no control, where he reigned a deſpot, where Mr. Bourne lay at his mercy.

My lords, as to the aſſault, I conſider it, and I truſt your lordſhips will conſider it, as a conſequence reſulting from the original libel publiſhed

liſhed by Sir James Wallace; on this circumſtance permit me to obſerve, that had Sir James Wallace proceeded againſt Mr. Bourne by action for damages, inſtead of proſecuting him by indictment, and had it appeared to your lordſhips that the provocation was ſuch as no gentleman nor officer honoured with his majeſty's commiſſion could ſubmit to, your lordſhip would direct the jury to take the circumſtance of provocation into conſideration, and to give damages to the plaintiff in proportion to the provocation which he might have received from the defendant to induce the aſſault; in this caſe I am ſure an Engliſh jury would have given a trifle indeed.

Great weight will be laid upon Sir James Wallace's ſituation. The gentlemen on the other ſide will repreſent him as a man of unqueſtionable courage and conſummate honour. I ſhall not queſtion his courage, but as to honour, it may be ſaid of honour as of wit, it is the property of thoſe who have it, and too often their only property.—Honour, my lord, is the property of my friend, a poor lieutenant, with only his half-pay to ſubſiſt upon; he eſtabliſhed his title to it by his ſword, and by his ſword he has protected the poſſeſſion; and as to profeſſional ſituation, my friend has every thing in proſpect that his opponent can pretend to have obtained.

My lords, when I ſpeak of the courage and honour of my friend, I do not confine myſelf to his conduct reſpecting Sir James Wallace, but extend my ideas to that brave and honourable conduct proved to belong to him by the voluntary affidavits of thoſe gentlemen he has ſerved with, and ſerved under, as a naval officer, I mean as lieutenant of marines, fighting in the

ſervice

ſervice of his king and of his country, and bleeding in thoſe ſervices.

My lords, I have only to add, from the affidavits which have been laid before your lordſhips, from the arguments which have been urged by the learned gentleman with whom I have the honour to act, and who preceded me with ſo much ability, from its appearing that Sir James Wallace was the original libeller, from its being clear that the aſſault was the conſequence of that libel, and from the humanity which I am confident influences your lordſhip's breaſt, you will be of opinion, that though the defendant may have acted wrong in his civil capacity, and erroneous as a man, yet your lordſhips, though you cannot juſtify him, will conclude in your private opinions, that he has acted right as a ſoldier, and therefore in pronouncing the public judgment of the law, you will ſoften the rigor of juſtice with the benignity of mercy.

Lord Mansfield. I don't obſerve there is any thing ſaid in the affidavits about his circumſtances, except what he ſays himſelf about having granted an annuity.

Mr. Erſkine. I believe his caſe is juſt this—he is a lieutenant of marines, and the Court Calendar is his title deed—he has no other but that pay. He had a penſion for his gallant behaviour, but that is ſold.

Lord Mansfield. Not ſold, but mortgaged upon an annuity.

Mr. Solicitor General. I believe he don't mention the ſum, and not that he had ſold it, but charged it with an annuity. His penſion is fifty pounds a year, and it is charged with an annuity of thirty pounds.

Mr.

. I find by miſtake the court has not yet read Lieutenant Bourne's affidavit, I mean as to the aſſault.

Mr. Bourne's affidavit relative to the aſſault was then read. See Appendix, p. 22.

ARGUMENTS on behalf of the PROSECUTION.

Mr. Bearcroft. My lords, I am of counſel for Sir James Wallace, the proſecutor, who calls up Mr. Bourne for judgment upon both theſe indictments, and I am extremely happy for Sir James Wallace's ſake, to have obſerved that patience; and in uſing that word I mean ſomething more than the ordinary idea of patience, that the court has ſhewn, in hearing every thing that has been ſaid, and every thing that has been ſworn for the defendant—I ſay, I rejoice in this for the ſake of Sir James Wallace, becauſe I therefore inſure him he will meet with the ſame treatment from the court. And if he does I will venture to pronounce, that Sir James Wallace will be found from the beginning to the end of this unfortunate conteſt, perfectly acquitted in the judgment of men of all deſcriptions, except in a ſingle inſtance.

I mean, that he was prevailed on in a fit of irritation to plead before the juriſdiction of a newspaper.

I know that when your lordſhip comes to pronounce judgment upon the libel, that fault of the proſecutor of the libel will ſtand the defendant who is convicted of it in much ſtead. But I

deny that it will have any conſequence, or bear in the leaſt degree, by way of extenuation, upon the aſſault that was committed, for which I truſt the court will give a very ſerious judgment.

My lord, I am ſorry, and I am perſuaded Sir James Wallace is aſhamed he did put that letter of the 20th of December, 1782, into a news-paper.

It was anſwered however to the ſame juriſdiction by the defendant—and anſwered in the groſſeſt terms that could poſſibly be uſed; and if Sir James Wallace's letter had uſed the expreſſions which are only to be found in the mouths of the advocates for Mr. Bourne, and not upon the face of that letter, Mr. Bourne was more than even with him by the anſwer he put into the paper.*

He calls him in one part of that a daſtardly coward, and a ſcoundrel.—That I take from the paper itſelf. §

With reſpect to that they were both, I admit, very much in the wrong.

All I have to aſk for Sir James Wallace is, that his conduct may be decided upon by your lordſhips, and thoſe who chuſe to form an opinion upon it, not by the judgment of a ſelf-erected court of military officers, of whatever rank, number, or reſpectability, for their judgment cannot weigh a feather in any man's mind, if it be recollected, that the firſt principle that is neceſſary to juſtice (namely) before they pronounce ment,

* See Sir James Wallace's letter, Appendix, p. 7.

§ Theſe words, daſtardly coward, are certainly in one of the letters ſent by the defendant to the proſecutor at Bath, and after-publiſhed in anſwer to the proſecutor's letter in the Herald; yet the proſecutor ſays the defendant never came to *the point*.

their judgment) is to hear both ſides, and your lordſhips will do that. *

Your lordſhips have had before you already (and I am ſerious upon it when I am forced to ſtate to your lordſhips that every circumſtance—every word that is introduced into the affidavits, upon the part of the defendant, are ſworn by him, and confirmed, as ſome of them are by other witneſſes in their affidavits) every th: that can bear the leaſt colour of extenuation an offence, which is expreſsly contradicted Sir James Wallace, and ſupported by more number, and equal character, it will not be d: puted.

I ſay it is a melancholy circumſtance, that th unfortunate buſineſs, which has created ſo muc uneaſineſs, is to end in the contraſt of affidavi upon facts between a great number of perſons undoubted reſpectable character, credit, and ho nour, but ſuch is the caſe.

My lord, it is ſuppoſed there is an extenuati of the conduct of Mr. Bourne upon this occa ſion—upon theſe grounds (to ſtate it ſhortly.)

That he was under the command of Sir James Wallace; that Sir James Wallace abuſed his ſituation, for the purpoſe of inſulting in an ungentleman-like manner, and oppreſſing him frequently when on board his ſhip with him.

That they ſtate as the provocation that led to every thing elſe.

It was obſerved by my learned friend, who ſpoke the ſecond, that he claimed a merit for his client, in ſuppreſſing that natural indignation

* Both ſides were heard by the Portſmouth corps before they came to their reſolutions: Major Varlo on the part of Sir James Wallace.

that he muſt feel at the inſulting and oppreſſing tyranny of Sir James Wallace.

The court will ſee when the affidavits come to be read, whether he is entitled to any ſuch merit.

The counſel for the defendant, though they were warm, and went very much at large, in point of declamation, yet did they forbear to enter minutely into theſe long affidavits; they touch, however, upon ſome parts of them, but it is my duty to be a little more particular, and to ſtate to your lordſhip ſuch a body of contradiction through every part of them, that at leaſt I have a right to aſk this of the court, not to believe them, and not to take the fact for granted.

For that is enough, and I would not wiſh to decide where I ſee poſitive contradictions between gentlemen, neither of whoſe characters I am acquainted with, but I have a right to ſay to the court, and I beg it may be remembered, when the judgment comes to be pronounced, there is ſuch a contradiction to very material facts laid before the court to the affidavits of the defendant, the court muſt at laſt judge of, and they cannot form their judgments, taking thoſe to be facts.

My lords, I will ſay more—I will ſay when Mr. Bourne's affidavit comes to be attended to, and the contradictions, ſuch as they are, traced and obſerved, it will be ſeen Sir James Wallace, ſo far from being blameable, oppreſſive, or tyrannous in more than one inſtance, behaved with a kindneſs to Mr. Bourne, which deſerved a different interpretation.

The intention of the defence may be ſeen in the firſt affidavit, Mr. Bourne ſets out with in-

queſtion,

troducing a fact which has no relation to this queſtion, for the purpoſe of giving bad impreſſions of Sir James Wallace's conduct at the firſt inſtant that he came to the knowledge of Mr. Bourne, for the purpoſe of making the court believe it was true, (your lordſhips will look at the affidavit, and ſee whether you believe it) that Mr. Bourne had ſuch an averſion to the character of Sir James Wallace, that when he came to Portſmouth to go on board the ſhip, he ſolicited and endeavoured by all poſſible means to prevail upon other gentlemen of the corps to go in his ſtead, but he could get no man, however diſpoſed to ſerve a man of Mr. Bourne's character, to exchange with him for ſo bad a birth—that is an expreſſion he chuſes to uſe.*

In Auguſt 1771, ſays Mr. Bourne, I became acquainted with Sir James Wallace—it happened in this way.—A friend of mine (a Mr. Murphy) came into my room (where I was confined with wounds I had got in the public ſervice) with Sir James Wallace, who had had a quarrel with Mr. Murphy, there had been blows, and I interfered to put an end to it. A Mr. Sleigh, a friend of Sir James Wallace's, was afraid it would ſtill go further, and the next morning again applied to me, and I (Mr. Bourne) uſed a great deal of pains, and did at laſt ſucceed to prevent any further conſequences between Sir James Wallace and Mr. Murphy.

Now it is clear beyond a doubt this bears no competition with the anſwer, for it happened that Sir James Wallace was going down ſome ſtairs by the waterſide when he endeavoured to paſs

* See the ſeveral affidavits in the Appendix, proving the fact here denied.

paſs this Mr. Murphy, a lady, and a child, and a little dog—Sir James Wallace with a ſtick he had in his hand ſtruck the dog, to make way for himſelf to go by—Mr. Murphy flew into a violent rage, and ſtruck Sir James Wallace upon the face. That inſtant he returned it, and there was a ſcuffle between them—with great difficulty they were parted, and they inſtantly went to the room where Mr. Bourne was. It was aſked in an inſtant who the parties were. The inſtant Sir James Wallace's name was announced, Mr. Murphy, in the preſence of Mr. Bourne, begged his pardon, and uſed the ſtrongeſt words of contrition; ſaid he was exceſſively ſorry for what he had done, and made the ſtrongeſt acknowledgements of ſorrow for what paſſed, and there was an end of it. The next morning he ſent a letter to Sir James Wallace, there can be no doubt of it, for I can read the letter from Mr. Murphy himſelf; in which, after expreſſions of great reſpect for Sir James Wallace, and great ſorrow for what had happened, he treats it as a circumſtance of advantage to himſelf—They had got acquainted, and Mr. Murphy immediately proceeded to make an advantage of it, and he begs the favour of Sir James Wallace to provide for a young man ſixteen years of age, who was then in the ſea ſervice.

This letter ſhews the miſrepreſentation of this part of the ſtory. The letter ſhews there was an end of that buſineſs upon the ſpot, and there was not, in truth, any expectation of that quarrel being renewed.

I complain of the defendant ſetting out with this—If it was true as ſtated, I complain of it ſtill more when it comes to be explained, when

it

it is not ſtated according to the truth of the matter. *

It is ſaid Mr. Bourne was ſo very averſe to ſail under Sir James Wallace, that he attempted an exchange. I have an affidavit of Mr. Spry's to read, the firſt Lieutenant's of the Warrior, † a man of excellent character in the neighbourhood; he ſwears ſo far from it, that frequently in converſation with Mr. Bourne, after he had been on board the ſhip in the early part of the voyage, Mr. Bourne repeatedly expreſſed his happineſs of ſailing with Sir James Wallace, and bore ample teſtimony of his general character, which is utterly inconſiſtent with the idea of Mr. Bourne's affidavit, who ſwears that his mind was at that time oppreſſed with a bad opinion of Sir James Wallace, after that affair at Whitehall.

Now I will come to another circumſtance which appears upon our affidavit, which is nevertheleſs fit to be ſtated.

Mr. Bourne complains of Sir James Wallace's treatment; now what was the firſt intercourſe they had? As ſoon as Mr. Bourne gets down to Portſmouth, he aſks Sir James Wallace's leave to go to London for three days; Sir James ſays, Sir, I cannot give leave, it is improper; but if you will only go for three days, I will do what I can—I will not take notice of it; he actually ſtayed fifteen days, and Sir James Wallace did not take notice of that. Who was it that conferred an obligation? Who behaved handſomely and

* See the affidavit of Mr. Murphy and John Jackſon in the Appendix, where the facts of this narrative are truly related, and thoſe here ſtated are fully contradicted.

† For this man's excellent character ſee the note to his affidavit in the Appendix.

and kindly in the firſt intercourſe between the parties.

When they got to Madeira general orders were given that no officer ſhould be on ſhore; the reaſon was given that the enemy's cruizers were about, and it was neceſſary for the officers to lay on board. Sir James Wallace, and ſeveral officers in company, dined on ſhore with the Britiſh Conſul. Mr. Bourne was introduced by Sir James Wallace to the Conſul. As they were riſing from dinner Mr. Bourne aſked leave of Sir James, againſt the general orders, to ſtay on ſhore that night. He was unwilling to grant it, but at the ſame time unwilling to refuſe him in ſuch a company of ſtrangers. He gave him leave—at his ſecond requeſt he was not refuſed. What was the conſequence? Mr. Bourne and one of the gentlemen, Mr. Markett, that joins with him in the affidavit, got intoxicated on ſhore—go to the Theatre, and behave in ſuch a way that they are turned out of the houſe, inſulted, beat, and abuſed. I ſtate the affidavits. He did not return the next day—he ſtayed another night. In the morning when Mr. Bourne and Mr. Markett had returned ſo treated by the inhabitants, an ironical note in the name of both Mr. Bourne and Mr. Markett, was ſent to their commanding officer, Sir James Wallace, in ſome ſuch terms as theſe—your lordſhip will ſee ſet forth in the affidavits.

Mr. Bourne and Mr. Markett preſent their compliments to Sir James Wallace, and return him their particular thanks for the favor he did them in introducing them to the Governor of Madeira

* This ſtatement of facts is fully contradicted by the affidavits of Lieutenant Monke, Markett, and defendant.

Madeira, to which circumſtance they attribute the polite treatment they received on ſhore.—This is proved upon oath.

This was an inſult, if you talk of inſult, it was the *firſt* that was given upon either ſide*.

Sir James Wallace ſent for Mr. Bourne and Mr. Markett, he aſked them what they meant by it, and I believe he told them upon that occaſion, and Mr. Bourne particularly, that he behaved very ill, or ſomething of that ſort, and told them if ſuch was their conduct he could have no farther acquaintance with Mr. Bourne, and he puts an expreſs negative as to any other expreſſions, being uſed by him warmer or ſtronger than theſe† ?

What is the next thing—That one evening Sir James Wallace was ſitting in his cabin, and he hears a noiſe in the ward-room (the place where the officers uſually ſit) he enquires, and it turns out to be occaſioned by Mr. Bourne; an officer, Lieutenant Stephenſon, was in bed, whoſe place it was to turn out in an hour or two to take watch in turn. He begged Mr. Bourne not to make a noiſe, and he ſays he attended not to it. In conſequence ſomebody put out the candles to put an end to it. Mr. Bourne was exceedingly angry, and ſent to Sir James Wallace this kind of meſſage: That he took it for granted that Sir James Wallace had ſome malice to him, and had ordered the man that blew out the candles to do it.

That was exceedingly ſtrange, it is impoſſible to be true, he ſends to him as if Sir James Wallace

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* By what rule of logic does the learned barriſter conclude, that to be the firſt inſult, which is clearly a conſequence of an inſult.

† Lieutenant Markett poſitively ſwears, that the proſecutor ſaid "Why, if you thought yourſelf aggrieved or affronted, did not you call me out, or words to that effect. See Appendix, p. 11.

lace had talked to him about fighting, and aſked him if I have uſed you ill, why don't you call me out. That is denied by Sir James Wallace and ſeveral perſons who were preſent at the time, and as poſitively Sir James Wallace ſays, that the harſheſt expreſſion he uſed to him was—go along, ſir, you are a very troubleſome man.*

Now I come to that part which the gentlemen chuſe to dwell upon, that is the excluſion of Mr. Bourne from the quarter-deck, and the tyrannical inſult which, without any provocation, Sir James Wallace is ſuppoſed to have thrown upon Mr. Bourne—to repreſent it in the words of the learned counſel, it is that Sir James Wallace came from his cabin in the manner of an inſane man, with his eyes flaſhing fire, the words of my learned friend, clenching his fiſt in the face of Mr. Bourne, and he then ſaid to his next officer, Lieutenant Spry, Mind ſir, my orders are Mr. Bourne does not walk upon the ſame ſide the quarter-deck with me.

Then Mr. Erſkine ſays, by the caſt of an eye which he threw upon our paper, by the bye he had no right to caſt his eye at all upon it, but be that as it may, it was only a caſt of his eye, or he would have ſtated it more correctly than he did, he would have ſtated it as a right and privilege of the captain to do as he pleaſed. Now how is it ſtated by Sir James Wallace, and ſworn to by ſeveral others? In the firſt place he puts a direct negative poſitively, and ſays he did not behave in ſuch a manner, he is confirmed in that denial by perſons preſent

* See note (*) In Appendix, p. 3. where Mr. Bourne ſays, that Lieutenant Stephenſon acknowledged he was drunk, and aſked defendant's pardon for his ill-conduct.

ſent, and his order to the officer, that Mr. Bourne was not to walk upon the ſame ſide is denied, that is ſworn to by Sir James Wallace and ſeveral others*.

I preſume the captain has the privilege of walking on the quarter-deck—I claim no other privilege for him than that. Mr. Bourne came from the place where he was walking, and he paſſed and repaſſed Sir James Wallace with a hectoring geſture, ſhouldering him, and inſulting him, in the manner ſworn by the ſeveral affidavits; thus provoked, Sir James Wallace ſaid to Mr. Spry, Underſtand, Sir, it is my deſire Mr. Bourne does not walk upon the ſame ſide the deck as I walk upon. Was it not juſtifiable? Was it not perfectly provoking? When Mr. Bourne comes out of his place, and comes up in an inſulting manner to him, he requires in future he ſhould not do ſo. He had a right to do that—he has forbearance if the fact be ſo—He would be perfectly juſtified in order, to borrow the phraſe of my learned friend, if he had ſaid he ſhould walk upon no ſide of the deck, or that he ſhould not come at all upon that deck, he certainly would be warranted if he had done that. Thus the caſe ſtands. I don't recollect in the courſe of it, there are any other charges fit to be attended to, particularly in this court; except, as I ſaid before,

* See note to Appendix, page 30, The proſecutor acknowledges in his affidavit, p. 30, that he ſaid, "Mr Spry, my orders are, that Mr. Bourne does not walk with me." Now taking theſe to be the words, was not this order virtually prohibiting the defendant from walking on the ſame ſide of the deck with the proſecutor? But the true expreſſion, as ſworn to by Mr. Bourne, is corroborated by the oath of lieutenant Monke, who goes further than Mr. Bourne, for he adds, that after the proſecutor had given his prohibitory order to lieutenant Spry, he turned to the defendant and ſaid, "therefore, Mr. Bourne, you muſt ever walk on the oppoſite ſide." See Appendix, p. 9.

calling for the judgment for the libel, which is a crime that provokes aſſaults and challenges*.

The defendant has been adviſed to ſtate to the court, that upon many occaſions, and particularly at Jamaica, Bath, and London, he had challenged and endeavoured to provoke the defendant to fight, and he would not do it.

I find myſelf in great difficulty how to conduct myſelf as to that point—I am afraid my client, Sir James Wallace, has been led to follow up that example. I am afraid he has followed a bad example, and that he has gone into that point, which, however fit it may be for a court of marſhals of France, is not fit to come before the judges of the court of King's Bench, but if an apology can be made for every thing Mr. Bourne has done, of whatever kind, however outrageous, I truſt Sir James Wallace's apology will be allowed, for his feelings, when he ſhews upon the face of this affidavit, he has at all times done, and been ready to do, every thing that becomes a man of honor, and of the ſtricteſt punctilio to do.—I aver it.

I am afraid to point out the particular parts of the affidavits; your lordſhips ſaid, when the affidavit of a noble lord was to be read, you were to have lord Cork's opinion.

It was extremely improper, they have filed their affidavits, and I have the affidavit of lord Cork, who tells a ſtory perfectly different from my ideas of it, for when I talk about the punctilio of honor, I mean this, that Sir James Wallace never would permit

* That libels, as well as ill language provoke aſſaults and challenges, is very clear from the preſent caſe. It was a libel provoked the conduct of the defendant, and that libel was the production of Sir James Wallace, and yet for anſwering that original libel the defendant has been puniſhed!

permit himſelf to be in private with Mr. Bourne; he was perfectly right, for he did not chuſe to ſay a word about it in the preſence of third perſons. Each of the parties were incenſed againſt each other, and if the conduct of Sir James Wallace, from the beginning to the end, had been properly known to thoſe officers, colonels, and captains, and of whatever rank they were in in the army, were ſaid to have formed their opinion upon it, if they had had the true ſtate of the caſe before them, they would have given a very different judgment*.

It is ſuggeſted that Sir James Wallace has behaved exceſſively ill, for that at Bath he pulled out his piſtol to Mr. Bourne; and it has been ſuggeſted Mr. Bourne ſent a ſort of challenge to him, and that Sir James Wallace made a paltry evaſion about ladies being there.

I beg of your lordſhip, and of every body that has curioſity to attend to this buſineſs, to mark the affidavit upon that part.

Mr. Bourne ſends a letter, without a name, that a gentleman at an inn wants to ſpeak with Sir James Wallace; Sir James Wallace returns for anſwer, and deſires to know his name, for he will come to no perſon without a name; there came in reply a meſſage, it is a Mr. Bourne; the anſwer is, I have no buſineſs with Mr. Bourne; in this part of the affidavit it is ſaid, if Mr. Bourne has any

* The reſolutions of the marine corps upon the conduct of the proſecutor and defendant were not partially, nor raſhly entered into, as is here repreſented by the counſel. At the meeting of the Portſmouth diviſion, Major Varlo urged every thing in favour of the proſecutor that his *attachment* could ſuggeſt, and it was after a full hearing of both ſides of the queſtion, that the defendant received that proof of approbation from his brother officers, in which they ſtill perſevere, and which fully compenſates him for every inconvenience he has ſuffered, or may ſuffer under the infliction of a *cruel* and *unuſual* puniſhment.

any thing to ſay to Sir James Wallace, let him ſend and propoſe his terms, he will anſwer it.

As to the piſtol in the ſtreet, it has been proved Mr. Bourne threatened to cane him wherever he met him, and do him a miſchief; and Sir James Wallace ſwears, that conceiving ſome inſult of that kind, or diſhonourable treatment might be attempted, he put piſtols in his pocket for his ſafety, to repel any ſuch attempt; the fact proves he had ground for his ſuſpicion, for as he was coming down the ſtreet, Mr. Bourne went up to him, flouriſhed his cane, and was going to ſtrike him; Sir James very properly pulled out one of his piſtols, placed it upon his ſleeve, and told him to keep off. No improper, or illegal uſe were made of thoſe piſtols*. As to any improper uſe of them in another way, it is improper for me to ſay aword. After this the parties came to London, and there is a publication in the newspapers.

It is inſiſted in the affidavits upon the part of Mr. Bourne, that he knew nothing of that former publication—He has ſworn it, I have no right to ſay that is not true, becauſe I have no affidavit to the contrary, and the nature of the thing does not admit it, but whether he knew of it or no, he was the cauſe of it, beyond all doubt, for it is in proof by the affidavits, Mr. Bourne made it his conſtant, daily, and hourly practice to go about in all companies, and repreſent to every man he met, friend, acquaintance, or ſtranger, that Sir James Wallace was a daſtard and a coward, that he had provoked him, and ſent him a challenge, that he had beat him, and would beat him wherever he met him. It

* But Sir James Wallace did then abſolutely refuſe to retire with Mr. Bourne, to make a proper uſe of his piſtols, and yet it is urged that Mr. Bourne never challenged Sir James! See the indictment for the libel, p. 3.

It was extremely natural therefore for Sir James Wallace to ſuppoſe he was the author of the publication in the newſpaper.

I rely upon this, the libel is anſwered by the affidavits, and there is no colour to ſay there is the leaſt extenuation of the aſſault under the ſun.

My learned friends have agreed, that in point of honour he could do no leſs. I have no difficulty to ſay, that my humble opinion is, that in point of honour he ought not to have done near ſo much.

If it is neceſſary, to uſe the ſchool-boy's phraſe, to give the coward's blow, was it neceſſary to ſtrike him in the manner he did, attended with ſuch effects which the blows were, that ſhewed the manner in which hey were given. It is impoſſible thoſe blows could have been given merely for the purpoſe of preſerving Mr. Bourne's honor. The manner and effect of them ſhews they were given with malevolence. I now condeſcend, under ſuch circumſtances as theſe, to make an apology for the firſt count in the indictment, and yet, my lords, if it were a fault, it is not attributable to Sir James Wallace; when aſſaults are attended with ſuch circumſtances as theſe, a common clerk of indictments, that has inſtructions to draw them, of courſe, puts in ſuch counts, whether right or wrong. It is not attributable to Sir James; I appeal to the recollection of Sir James, the moment the cauſe came to be tried, if I did not ſay, I was ſorry there was ſuch a count. In my own judgment, I thought the evidence would not warrant the finding him guilty of it; and in truth I had not the leaſt difficulty to perſuade Sir James Wallace, that it was improper.

I truſt every imputation upon ſcores of that kind is properly waſhed off.

Then is there any vindication of the aſſault?

Here

Here is a diſpute between an inferior officer and a perſon under whoſe command he is. Says Mr. Bourne, I have been inſulted; I have been oppreſſed, as a man of honor I have behaved, if I had not behaved ſo, I muſt have given up my commiſſion, and have dragged on, through life, a miſerable exiſtence.

I have no objection the cauſe ſhould be tried upon that criterion, I aſſert upon affidavit it will appear, there is no colour to charge Sir James Wallace with inſult or oppreſſion; the only fault he has been guilty of was, in not calling Mr. Bourne to a court martial upon his conduct*. You will permit me to obſerve upon Mr. Bourne's application to Sir George Rodney, for a court-martial upon Sir James Wallace, I will be judged by Sir George Rodney, who thought he did right there, that he acted like a man of ſenſe and courage, and he ſaw no colour for a court-martial upon Sir James Wallace, at the inſtance of Mr. Bourne, and he would not give it, but he ſaw they were not fit companions for the ſame ſhip, and in kindneſs to Sir James Wallace and Mr. Bourne, who is pleaſed to ſay ſo, he withdrew him from that ſhip†. Certainly no conſequences can be drawn from that, one way or the other. Here is an aſſault which was cruel and outrageous. This court does indulge paſſions and provocations even in words, where they mitigate a great offence to a ſmall one, becauſe the court indulges paſſions which are incident to human nature, as ſudden paſſions are. Was that the caſe? It was his determination long before to meet him, and wherever he meets him, this young officer inſults him in the manner ſtated.

I ſubmit

* Sir James Wallace, by his own confeſſion, did apply for a court-martial, and it was refuſed.

† See Appe. dix, p. 31.

I ſubmit to the court, there will not be upon the facts, when they come upon the affidavits the leaſt extenuation. I ſubmit that the court will, for the ſake of preſerving diſcipline in the navy, and every thing which is decent and proper, paſs a very ſevere ſentence for the aſſault, which, if they do not for the libel, it will be a ſort of puniſhment upon Sir James Wallace, which I muſt confeſs, he in ſome degree deſerves, ſince he firſt of all began it in the news-papers*.

The affidavits of Sir James Wallace, Major Varlo, Thomas Spry, and Robert Farries, read.

Lord Mansfield. Don't read the affidavits to the ſame fact over and over again, only put the affidavits up; a great many have contradicted what Mr. Bourne ſays†.

Mr. Law. Yes; about five witneſſes.

Lord Mansfield. The complaint to Lord Rodney, was barely upon the orders not to walk upon the quarter-deck.

Mr. Bourne. My lord, it was for public inſult and oppreſſion. The letter to my Lord Rodney mentions it.

Lord Mansfield. But hear what I ſay, the affidavit ſtates the complaint, and ordering you not to walk upon the quarter-deck, on the ſame ſide, on board the ſhip.

Mr. Erſkine, If your lordſhip will give me leave, Mr. Monke in his affidavit ſwears, that the charge was for inſult and oppreſſion of Mr. Bourne, whilſt under Sir James Wallace's command.

O Lord

* This is a new ſpecies of logic. It ſtands thus, Sir James Wallace firſt began a libel in the news-papers, which libel was criminal, this libel produces an aſſault, and therefore the perſon committing the aſſault, ſhall ſuffer under a ſevere ſentence, and that for the indulgence of the perſon who criminally provoked it.

† Why did not his lordſhip add, and a great many have confirmed what he has ſworn to?

Lord Mansfield. What I ſpeak is from the defendant's own affidavit—That he laid a complaint before Sir George Rodney againſt the proſecutor, for ordering him not to walk the quarter-deck; beſides, there was no ſuch a thing as a complaint in general words of inſult and oppreſſion, he muſt ſpecify it—It ſtruck me ſo upon reading the affidavit*.

The affidavits of James Mildenhall, the Earl of Cork, William Davis, and James Madan, Eſqrs. read.

The affidavit of Ralph Dundas, Eſq. called for.

Lord Mansfield. You need not confirm my Lord Cork's affidavit†.

Mr. Sylveſter. Your lordſhip will pleaſe to favour me with a few words upon the part of Sir James Wallace, who now calls upon your lordſhip, for judgment, for as groſs a libel as ever was publiſhed upon any gentleman. Groſſer language could never be made upon any gentleman than has been made uſe of in this libel‡.

Much has been ſaid by the gentlemen on the other ſide, of nice feelings of men of honor, who when they conceive their honor is hurt, will ſeek for ſatisfaction; I agree with them in every reſpect, but this has not any application to the preſent ſubject, for thoſe nice feelings and honorable

* The hon. lord only ſpeaks here of one paragraph in the defendant's affidavit, and did not attend to the following paſſage, "And alſo requeſting that the admiral would order a court-martial on Sir James Wallace for public *inſult* and *oppreſſion*, and a breach of the fifth article of the printed inſtructions, in attempting to puniſh deponent." See Appendix, p. 5.

† Why not confirm it, when it ſtands contradicted by the affidavits of captains Deſborough and Hamilton, men poſſeſſing a ſenſe of honour, and eſtimation of character, worthy any ſituation, however elevated. See the notes on lord Cork's affidavit in the Appendix.

‡ Mr. Sylveſter differs materially with his coadjutor, Mr. Bearcroft, reſpecting this point, for the latter learned barriſter candidly gives all expectation of ſevere judgment upon the libel, fairly acknowledging that the libellous publications originated with his client.

ble conduct do not apply to the pr
ant*.

I am ſure neither of thoſe gentle
of honor, who have miſrepreſented the
way of extenuation, for no man of honor would
do as Mr. Bourne has done, put that upon affida-
vit that has been contradicted by ſome of the moſt
reſpectable people, from the very firſt; beginning
with what Mr. Bourne has ſet out with, to the
laſt period, there is not a ſingle circumſtance in
point of fact or in point of date, but what is con-
tradicted, and not contradicted in an indifferent
manner, but poſitively ſo without evaſion†.
Every fact from the beginning to the end is abſo-
lutely contradicted by the witneſſes, not by one
alone, not by Sir James alone, but by five or
ſix‡.

Mr. Bourne firſt begins with tranſactions of an
early period, by way of inducing the court to be-
lieve Sir James Wallace was at enmity with him,
and that before he entered on board the ſhip, a
quarrel had ſubſiſted. He ſtates the quarrel be-
tween

* Mr. Bourne flatters himſelf he ſuffers but little in the eſtimation of gentlemen, for differing from this lawyer, in what conſtitutes the proper purſuits of honor, and it being clearly a ſubject to which he is incompetent both in theory and practice, his judgment upon it is not worth controverting.

† While Mr. Bourne's opinion of honor, ſtands approved by the aſſent of his counſel, men who evidently felt thoſe principles they maintained; and while it is alſo approved by men of his own profeſſion, who have amply teſtified to the propriety and neceſſity of the meaſures he adopted to call his opponent to account, he feels a ſatisfaction, a pleaſure at his heart, which fully compenſates for the extraordinary ſentence, intended to cruſh him with peculiar ſeverities.

‡ This is aſſertion not argument, nor proof; its falſity is eſtabliſhed by the affidavits on the part of Mr. Bourne. Can the hiſtory of law chicane furniſh an inſtance of groſſer abſurdity than a man acting diſingenuouſly at the ſame inſtant that he dares preſume to give an opinion upon what conſtitutes a point of honor!

ween Mr. Murphy and Sir James Wallace—That Sir James Wallace and Mr. Sleigh came into his room, that he interfered in order to make up the quarrel, that Sir James Wallace laid hold of him by the breaſt, and aſked him if he wanted to take that quarrel upon himſelf; that fact is abſolutely contradicted not only by Sir James Wallace, but Mr. Sleigh ſays ſo far from Sir James Wallace laying hold of Mr. Bourne by the breaſt, he did not touch him, he did not come near him*.

But ſays Mr. Bourne, the next day Mr. Sleigh came to him, and was afraid of the conſequences of it. Mr. Sleigh poſitively denies that fact, and ſays he never was apprehenſive of any conſequences ariſing from it.

What was the conduct of Mr. Bourne and Mr. Murphy, the moment they knew the name of Sir James Wallace and his character, they immediately ſhrunk back and were aſhamed of their conduct. The next thing Mr. Bourne ſays is, he was always deſirous of quitting the ſhip, and that he endeavoured to get other officers to exchange with him: now the reverſe of that is proved; by the affidavits it is proved, that he ſaid, that he thought it the happieſt thing in his life, to ſail with ſo brave and excellent a man, and Mr. Spry ſays many young men would be happy to be under Sir James Wallace, as they muſt expect many valuable prizes†.

Mr. Bourne ſays, before he came to Jamaica he had frequently been inſulted by Sir James Wallace.

* See the joint affidavits of Mr. Murphy and John Jackſon, in Appendix, confirming what Mr. Bourne has ſworn to.

† In the affidavits of lieutenant Moake, Markett, and Crebbin, &c. &c. all contradicting lieutenant Spry.

lace coming up upon deck with his fists clenched in a menacing provoking manner, and driving him from side to side of the deck. If that had been the case every officer on board must have heard of it—what do the officers say?—But not one of them heard it, if it had passed they must have heard of it—It could not be done privately, —Every one of them, Mr. Spry, Major Varlo, Mr. Ferris, all contradict Mr. Bourne, every one denying that fact.

The next thing Mr. Bourne swears is, that Mr. Stevenson came, seemingly intoxicated with liquor to Mr. Bourne, behaved with insolence to him, and afterwards put out the candles, That he then sent a message to know if it was done by Sir James Wallace's orders—Mr. Spry came down and enquired into the matter; he told him there was some dispute upon the subject, that he thought Sir James Wallace had sent the orders. Mr. Bourne says, Sir James Wallace sent for him to his cabin, and when he came, Sir James desired him to get away, that he would say nothing to him at that time, but that he would take another opportunity, and he, Mr. Bourne, should hear from him, Sir James Wallace. Is it likely a commander of a ship should send for a lieutenant of marines, and then tell him, I will say nothing to you now, you shall hear from me—Was that likely from a commander to a subaltern? Is that probable*?

But says Mr. Bourne, at that time there was present, the captain, the master, and the surgeon of the ship.

Neither one of those facts are true, not one of them—Mr. Spry, the lieutenant, went down to know

* The likelihood or probability of the fact, was not the objects for the court to conclude upon, but the truth, and it has been positively sworn to.

know what the diſturbance was, ſays, it was between ten and eleven at night, and Mr. Stephenſon, the lieutenant, who was obliged to go upon the next watch, at twelve, wiſhed to have ſome ſleep; he made enquiry what was the matter, he ſaid Mr. Bourne has made a great noiſe, and has diſturbed me; I am going to the middle watch, I frequently deſired him to diſcontinue it, he would not, upon which I got out, and put out the candle. There was nobody preſent, but Major Varlo and himſelf, and Lieutenant Spry; and the captain, inſtead of making uſe of the words Mr. Bourne ſays he did, only told him, he was a very troubleſome man—That was all.—And as to the fact of the maſter being there, the maſter had loſt his leg twelve days before, and was confined to his bed*. The ſurgeon was not there, but was ill and confined to his cabin. He muſt know that it was not Sir James Wallace ſent the orders to put out the candles, becauſe Mr. Stephenſon, the lieutenant, was in his cot at the time, in bed, and was to get up at twelve o'clock to take next watch. As to the inſinuation that he was intoxicated with liquor, Mr. Spry ſwears, a ſoberer man never was on board a-ſhip, and that he never once ſaw him intoxicated in liquor.

Lieutenant Ferris, who ſupped with him that night in the ward-room, ſwears, he went to bed perfectly ſober. What can your lordſhips think of a man miſrepreſenting facts, and ſtating facts, every one of which is perfectly falſe†. There is not a cir-

* This is a wretched ſubterfuge, and mean prevarication on the part of Sir James Wallace; it is very true that the maſter was wounded and in bed, but Ferris had, in conſequence of that accident, been appointed to act in the capacity of maſter, and to him it is that Mr. Bourne alludes in his affidavit. See notes to Ferris's affidavit in Appendix.

† Every perſon muſt think that a man who miſrepreſents facts, and is guilty of falſhood, ſhould be hooted from ſociety, and Mr. Bourne thinks that

circumſtance of any tranſaction that paſſed, but what is denied by thoſe witneſſes.

The next day after putting out the lights, he ſays, Sir James Wallace ſeeing him, Bourne, upon the quarter-deck, came running out of his cabin in a violent manner, with his fiſts clenched in his face, muttering out the word ſcoundrel, but he, really thinking that ſaid Sir James Wallace was that inſtant in a ſtate of madneſs, he turned away his head and went to the other ſide of the deck, and walked with Lieutenant Monke the officer of the watch; that Sir James Wallace then walked backwards and forwards in a violent rage, and then went back again into his cabin. That he ſhortly returned and called out Lieutenant Spry, and gave public orders, that whoever treated him with diſrepect ſhould never walk upon the ſame ſide of the quarter-deck with him, and therefore Mr. Bourne you muſt ever walk upon the oppoſite ſide*.

This is not only contradicted by Lieutenant Spry, who receives the orders, and Sir James Wallace, but by Major Varlo, who, when he was ſent down to the ward-room to this very man, Bourne himſelf, and Bourne complaining of theſe orders to him, that he had been ill-treated, he does not venture to ſay one ſingle word of it—It was private he had been ill-treated, he does not venture to ſay one ſingle word of it to his commanding officer. Mr. Varlo, the major of marines on board, ſays, he not only never heard from

that the man who does ſo for a pecuniary fee or reward, is even worſe than the wretch who volunteers in ſuch ſcandalous buſineſs.

* Theſe facts are poſitively ſworn to by Mr. Bourne and alſo by lieutenant Monke, who deſcribes them in the ſtrongeſt and moſt emphatical language. Scoundrel ſeems to be a favourite epithet with Sir James Wallace, he applied it to the defendant on the trial. See Mr. Mac Nally's argument on this point.

from any perſon, of any ill uſage from Sir James Wallace to Bourne, but that he never once complained to him, and that if he had, he ſays, he ſhould have thought it his duty, as his commanding officer, to have taken him under his protection. At the very moment the tranſaction paſſed that he now complains of, this ill-uſage and being turned off the deck, he never complained to him of the orders he ſhould not walk there*.

Here is another fact which is not perhaps very material, but which ſhewed the temper of mind of Mr. Bourne in making this affidavit.—He ſays, the ill uſage was continued for two or three weeks after, now in leſs than ſix days they arrived at Jamaica, inſtead of two or three weeks†.

Mr. Bourne ſtates in the affidavit, that when they arrived at Jamaica, they met on ſhore at Port-Royal Harbour, he met with Sir James Wallace in company with Major Varlo, that he gave him an opportunity of explaining himſelf, which he declined, and walked quickly away from him, and went to his boat.

Major Varlo ſays, that in the duſk of the evening Sir James Wallace and he met Mr. Bourne on ſhore at Port Royal, that Mr. Bourne came up and ſaid, I have ſomething to ſay to you—Sir James Wallace ſaid before Major Varlow, I will have no converſation in private with you, Mr. Bourne. Major Varlo, ſays that is all that paſſed, that nothing more paſſed but this, and from this you are to ſuppoſe, was what Mr. Bourne

* Mr. Bourne includes in the two or three weeks he ſwears to, the time which tranſpired from the inſult received by him from Sir James Wallace, to the arrival of the Warrior at Jamaica, and his removal from her to Le Hector.

† See note to Major Varlo's affidavit, page 56 in the Appendix.

Bourne calls evading an explanation in Port Royal.

The next fact is what paſſed before Captain Fiſher—Captain Green is the next perſon that ſwore to what paſſed at Port Royal, he could not hear the whole of it, being at ſome diſtance. But he ſaw Sir James Wallace—Mr. Bourne came out of a Negroe-hut and went up to him, and aſked him if he had any thing to ſay to him, upon which Sir James Wallace ſaid he had not; then ſays Mr. Bourne, I have to you, walk in private. No, Sir, ſays he, I will not have any private converſation with you.*

I truſt no man in England will have private converſation with him after this; he ſhould take care how he miſrepreſents things, when people are preſent that can flatly contradict it.†

Then he ſays, though he continued ſome time there, he never once heard from Sir James Wallace.

Two days after this very tranſaction, Sir James Wallace was under ſailing orders, therefore he muſt have been very expeditious indeed if he had.

Then he ſays he heard Sir James Wallace had been aſperſing his character—Then what was his conduct at Bath? Mr. Bourne comes to an inn, there he ſends for a waiter, and deſires a private room up one pair of ſtairs, and when there, he ſends the waiter out with a written note, but a private note, and ſends for Sir James Wallace—Says he, I will not come to a perſon that will

* See affidavits of Mr. Peacock, Mr. Weir, &c. in confirmation of Captain Green and Mr. Bourne.

† The ſpirit of prophecy is not among the attributes of Mr. Sylveſter, Mr. Bourne having been honoured ſince his confinement with the attention, converſation, and approbation of the moſt reſpectable characters.

not ſend his name—Sir James Wallace was not with ladies, but ſetting with lady Wallace, He then ſends word his name is Bourne—Says he, I have no buſineſs with Mr. Bourne—Then what was Mr. Bourne's conduct? He prepares himſelf with a brace of piſtols, and Captain Webber that makes the affidavit in this court, ſends him a ſword—When he returns with the meſſage, he finds Mr. Bourne had put the ſword and brace of piſtols on the table in the room. *

For what purpoſe was the ſword and for what purpoſe were the piſtols in a private place up one pair of ſtairs, in a place where no officers wear a ſword—In Bath therefore he muſt expect and muſt know Sir James Wallace muſt come unarmed.

It is not for me to know his deſign, my feelings go beyond that, I think no man of honor would arm himſelf when he ſent for a diſarmed man.† What is his conduct after that?—he writes a letter—an abuſive letter—he then meets him in the ſtreet, not by accident, but with his friend Webber, who had ſent him the ſword—Davis meets him in the ſtreet, and Webber ſays to Davis, come along with me, you will ſee Sir James Wallace beat or caned. Says Davis, I know Sir James Wallace too well, and all the world knows he will not ſuffer it—Come along with me, you ſhall ſee it—They came together down the ſtreet —Mr.

* The inſinuation here, clearly imputes the diabolical intent of aſſaſſination to Mr. Bourne; he heard it with ſurprize and horror! the impreſſion of horror ſtill remains, but his ſurprize has abated—men long uſed to habits of ſanguinary proſecutions, who argue under the ſole influence of a fee, without inquiry into diſtinctions of right and wrong, imbibe gloomy ideas; and as naturally annex the idea of aſſaſſination to a ſword or a piſtol, as boys or fools attach darkneſs to the devil.

† See Mr. Bourne's laſt affidavit, where he poſitively ſwears he had not any weapon whatſoever in the room he was to receive Sir James Wallace in.

—Mr. Bourne came acroſs the ſtreet in company with Mr. Webber, and keeps his eye upon Sir James Wallace and Bourne—what words paſſed they could not hear—He ſays Sir James Wallace pulled out a piſtol, and holds it at his breaſt—He never offered to ſtrike, if he had he knew it muſt have been followed with inſtant death. His own language is, I did not dare ſtrike him, if I had I ſhould have been a great fool indeed, for he would have ſhot me. And yet he comes to London, and buzzes it about at Bath that he has caned him, and treated him with infamy, and as my learned friend ſaid, gave him a blow never to be wiped off.

What then was done—he meets with a Mr. Abbott the next day, who told him if he had ſent a written challenge Sir James would have met him, to which Mr. Bourne ſaid, from the opinion he had of Sir James he would not venture to give him poſſeſſion of a written challenge—then he ſtates he meant to publiſh his letters; this was long before Sir James Wallace thought of publiſhing the letter. He told Mr. Abbott there was to be a publication of every thing that paſſed—then Sir James very unguardedly publiſhes his letter—when they come to town what was Mr. Bourne's conduct there?—Mr. Bourne tells every body of the tranſaction, that he had met with Sir James Wallace, that he had caned him, and treated him as a ſcoundrel, with every mark of contempt one man can treat another, and this with impunity. He tells them he had ſent him a challenge by Lord Cork, and Lord Cork had agreed to be his ſecond—Lord Cork denies the fact—he ſays, what I did was from a motive of friendſhip, I never meant to enflame

this man, ſo far from that Mr. Bourne himſelf muſt know it was falſe. Bourne ſays he applied to a nobleman to carry the challenge—Lord Cork ſays he abſolutely refuſed, and ſays he never meant to go as a ſecond, but as a mediator, and aſked Bourne, who did you mean by a nobleman that was to be your ſecond? He anſwered, your lordſhip; then his lordſhip ſaid, how came you to do that? upon which Mr. Bourne makes an apology to him for it.* That is Mr. Bourne's kind of conduct to miſrepreſent things. If your lordſhips are to make uſe of nice feelings, according to the arguments that have been made uſe of upon the other ſide, what would your lordſhip ſay to it, now when the weight of evidence is all upon one ſide?—it does not reſt upon Sir James Wallace's affidavit alone, but he is confirmed in every circumſtance, where any perſon is preſent, or can be preſent, he is confirmed in what he ſays—Mr. Bourne ſtands unconfirmed in many circumſtances, there is but one only in which he is confirmed—He gets a poor young man of the name of Markett to make an affidavit to a fact he himſelf does not dare to make an affidavit to. Mr. Markett ſwears, after a very fine panegyric upon Mr. Bourne, (drawn perhaps by himſelf) he ſwears to one fact which is denied by all the other witneſſes.† The fact was, that Sir James Wallace put the queſtion to him in the preſence of ſeveral officers of the ſhip—Why if you thought yourſelf

* See the notes upon Lord Cork's affidavit, where this aſſertion is fully diſproved.

† This *poor young man*, Mr. Markett, as Mr. Sylveſter has been pleaſed to call him, was Lieutenant on board the Warrior, a gentleman of honor and elevated courage, who could not have been induced to make affidavits by the influence of Mr. Bourne, or any other man, but nobly ſtood forward and voluntarily gave his teſtimony.

yourſelf aggrieved or affronted did not you call me out? That is denied by every body.

If your lordſhip was to ſit upon this either in a court of honor or a court of law—Is Mr. Bourne entitled to any degree of compaſſion?—Is his conduct that of a man of nice honor and feelings, who is hurt by ill-uſage, or the diſgrace he may receive. I can conceive a man diſtreſt by the conduct of another man towards him, then he is to be pitied—perhaps it was not in his power to be redreſſed; but in this caſe I think Mr. Bourne is more diſgraced by what he has ſtated upon the affidavit, than any other tranſaction that is ſtated to have paſſed.

Mr. Lawe. Pleaſe your lordſhip to favour me upon the part of Sir James Wallace, who brings this proſecution.

I conceive there never was an inſtance in which the merciful rules of this court, which permits defendants to extenuate offences at the bar of your lordſhips, have been ſo much abuſed as they have been upon this occaſion; there has been much inveteracy and rancour ſhewn againſt the proſecutor; inſtead of palliating or extenuating in any ſhape, or in any manner, ſo as to induce a conviction in the mind of any man, that conduct which was the reſult of provocation, or human infirmity. At this moment the affidavits at your bar are the affidavits of gentlemen approving that conduct, and not only approving of, but juſtifying the crime, for which the defendant ſtands here for your lordſhips judgment, not to palliate his offence, but to treat it with exultation.

At this moment I ſhall be warranted in deſiring your lordſhip to forget a little the laws of chivalry, which have been dealt out to us very plentifully,

plentifully, to follow a little the law of England, to reſiſt the violence which has been attempted to be ſupported with ſo high a hand as this is.—If I am not deceived in the affidavit of Webber, from what I can collect he ſtands in a ſituation, in a more criminal point of view before the court, than the criminal now receiving his judgment, and as to that Mr. Webber, I deſire of your lordſhip ſome animadverſion may fall on that gentleman, perhaps ſome of the officers of the corps may hear it.

Lord Mansfield. What is Webber?

Mr. Lawe. He is a Captain of Marines—I obſerve he approves of his conduct—he is privy to the ſending of the letter—and he ſupplies him with a ſword, and after full notice of what was ſaid and done.

Lord Mansfield. He is privy when he goes to aſſault him at Bath.

Mr. Lawe. He ſays from his diſpoſition, and behaving in ſuch manner, he could ſafely be abandoned to the guidance of his own judgment—that was reſpecting this gentleman's conduct at Bath—he ſays it was entirely conſiſtent with the rules of propriety as a gentleman and an officer.

Your lordſhip will permit me to go ſomewhat in the order of proceedings, ſtating inſult by one gentleman,

* In corroboration of Captain Webber's teſtimony, Mr. Bourne, with the permiſſion of Colonel Heathcote, prints the following extract from his letter.

The relation you gave me of the very outrageous and inſulting behaviour of Sir James Wallace to you while under his command on board a ſhip, ſufficiently juſtified, in my opinion, the reſentment you ſhewed of it at Bath, nor could I diſcover from any converſation I had with you, relative to Sir James, that you entertained the leaſt diſhonourable view or intention towards him, but that it was rather your wiſh to act in every thing concerning him with propriety and honor, and I am happy to add, that upon all other occaſions you appeared, as far as my knowledge went, to conduct yourſelf properly, and like a gentleman—to this I very willingly ſubſcribe my name.

J. HEATHCOTE.

gentleman, and the honor of the other gentleman. It is ſtated as a perſonal outrage committed by Sir James Wallace upon Mr. Bourne, who is repreſented as a man groaning under the weight of authority.

God forbid I ſhould ſtand here as an advocate for the abuſe of authority. I ſtand here upon the part of Sir James Wallace, who proſecutes, in this caſe, the defendant, who is to be taught the duty of ſubordination, which he ſeems to have learned a very ill leſſon of, in whatever military ſchool he has been educated, he muſt be taught by the ſober and wholeſome chaſtiſement of this court.*

In the firſt inſtance, he begins with what I ſhould have thought indecent almoſt to have mentioned, with a little private fooliſh quarrel that happened upon Whitehall-ſtairs, between Sir James Wallace and another perſon—a man that begins with that little incident is much more likely to be the aggreſſor of the diſputes than Sir James Wallace was, who ſeems to have obliterated all thoſe impreſſions, if he had received any againſt him when he came on board his ſhip. He receives him with kindneſs in the firſt inſtance, giving him leave to go to town upon his neceſſary occaſions; he overlooks the palpable extraordinary abſence, and at Madeira he rather treats him with diſtinguiſhed favor than marks of perſecution.

As

* Gentlemen of the bar, I am told, ſet up a preſcription for abuſe, under pretence that ſpeaking from their brief they are not anſwerable for illiberality: this may be a *legal* excuſe, and ſufficient to protect them from *proſecutions*, but it is a mean one, and cannot protect them from the cenſure of mankind. The robe of declamation may give ſanction to impertinence, but it is ſtrange that men who conſider themſelves members of a liberal profeſſion, and who from education might be ſuppoſed to have imbibed generous principles, ſhould degenerate into the baſeneſs of groſs perſonalities.

As to the difference about the affray on Whitehall-ſtairs, I think Mr. Murphy's letter—I don't know whether it has met your lordſhips ear yet, is a complete anſwer.

Lord Mansfield. It was read.

Mr. Lawe. He there ſtates Sir James Wallace's goodneſs, and the great degree of eſteem he had for him.

With reſpect to the orders of Sir James Wallace at the iſland of Madeira, if they were ſtrict in requiring the officers to be on board in the evening, it ſeems to me to be juſtified in ſtrictneſs, for the ſafety of his majeſty's ſhip under his command, and who is to reproach him for that, but the very gentleman in whoſe ſingle inſtance he relaxes it. When Mr. Bourne and Mr. Markett dine at the Conſuls, they take an opportunity in the moment of hilarity and converſation, when it is thought too much to refuſe it, to requeſt leave to ſtay on ſhore—they apply to Sir James Wallace, when he was not willing to mortify them—I ſpeak from the affidavit before me. They uſed him ſhamefully, they do diſcredit to the Britiſh navy in that iſland—they not only ſtay beyond their time, but get into brawls at the play-houſe. They refuſe to take off their hats in the Theatre, and they do ſomething that diſgraces them as gentlemen, which they were not warranted to do upon this occaſion.* Certainly they merited ſome degree of reprobation from Sir James Wallace—does he when he hears of it reprobate them for it? They come on board as uſual without reprobation—they might have appeared before him without reſtraint; but they feek

* For the falſity of this aſſertion ſee the affidavits of Lieutenants Markett, Monke, and Hodge, alſo of Mr. Richards, in the Appendix.

ſeek to affront Sir James Wallace with a voluntary inſult—they ſend a letter in which Mr. Markett and Mr. Bourne chuſe to thank him for his polite introduction to the Portugueſe Governor.

This gentleman, one of the marine officers, Mr. Markett, is a witneſs for him, it is thought proper to have an eye witneſs of what paſſes, and I muſt obſerve throughout that both Sir James Wallace, when he is defending himſelf, chuſes very properly to have witneſſes for his conduct, as well as Mr. Bourne thought proper to have witneſſes for his. In that event the public might have been ſaved the trouble they muſt now have, they might have had a friend who would have been more zealous to have ſettled it, and yet not ſo regardleſs of the public peace as Webber. Sir James Wallace ſends for them in the preſence of Major Varlo, and I beg leave to make one obſervation upon his teſtimony—he does not ſeem to be impeached on any ſide as a party, he ſeems to be the general mediator, applied to on both ſides. His teſtimony comes out with as much reſpect and credibility as any witneſs upon this occaſion can be ſuppoſed to be—he is preſent when Mr. Bourne and Mr. Markett are reprimanded for this letter—Sir James Wallace aſks what do you mean by ſending this letter?—ſaying the non-introduction of them to the Portugueſe Governor occaſioned inſult to them—Sir James Wallace ſays, if you behave in this manner I don't chuſe any further acquaintance with you.

After this there does not appear any marked inſult to this gentleman, as he chuſes to repreſent himſelf to be, but a number of inferior inſults are ſaid to be received by him.

He ſays Sir James often came to him in this

menacing kind of way, holding a fiſt to his face, and threatning him with indignity.

One obſervation I will beg leave to make, is it not a misfortune, if this was the general tenor of Sir J. Wallace's conduct it ſhould not have been obſerved by Major Varlo, one of the officers who was on board the ſhip, from the firſt to the laſt? —he never ſaw any of theſe inſtances—Mr. Bourne never communicates himſelf to Major Varlo upon it—never applied to him for redreſs and protection, if he had received ſuch inſults—but he ſpeaks of a variety and a regular ſeries of theſe inſults.

I come now to the 24th of April, when the inſult of the ward-room is ſtated. Mr. Bourne chuſes to ſtate upon that day Mr. Stephenſon being much intoxicated with liquor, and coming, as he conceives from Sir James Wallace's cabin, and at the inſtance of Sir James Wallace, began to treat Mr. Bourne with rudeneſs, and at laſt ordered the lights to be put out; that is not to be accounted for upon the general conduct of Mr. Stephenſon, or the principles of reaſon applied to Mr. Bourne at the time.

How does it ſtand upon the other witneſſes account—Major Varlo, Mr. Spry, Sir James Wallace, a Mr. Farris, all ſpeak to this, that Mr. Stephenſon was in the ward, or near it, not drunk, but in bed, waiting for the middle watch, that he was to go upon—he deſired Mr. Bourne at the time, who was making a violent noiſe in his cabin, not to diſturb him. Mr. Bourne made a violent noiſe, upon which he ordered the lights to be put out—Mr. Bourne ſent a meſſage with his reſpectful compliments, deſiring to know if the lights were put out by his directions—immediately after the ſaid meſſage Sir James

ſent

ſent for him, and when he came there he finds Sir James Wallace, Mr. Spry, Mr. Varlo, the Surgeon, and Maſter of the ſhip—it is very fortunate that in this ſtory, as told by Mr. Bourne, and in many other parts of the ſtory, Mr. Bourne's recollection is ſo bad; the ſurgeon was not there, but ill in bed—the maſter was leſs able to be there, he had loſt his leg, and been diſabled a long time after; therefore thoſe perſons were not there—thoſe perſons who were there have ſtated it in a way different from what Mr. Bourne has ſtated it. *

They ſtate that Sir James Wallace did not appear to behave with improper temper, and not with the decorum of a proper officer. The meſſage Mr. Bourne ſent was not in the name of all the officers, as he aſſerts, but in his own name ſingly—Sir James Wallace ſays, why did you ſend a meſſage to me to know why I ordered the lights to be put out? He told him he had given no ſuch orders, and that he, Bourne, was a very troubleſome man, and Mr. Bourne ſays that he then told him that at ſome proper time he ſhould hear from him.

This in terms, in as proper terms as the Engliſh language can furniſh, is denied by all of them.

It is very fortunate that to corroborate the evidence of all the others, Mr. Spry, who is an officer of the Barfleur, who came to town no longer ago than Friday, upon hearing this account, concurred entirely with the teſtimony of all the others†—His return was purely providential—

* Ferris, who was appointed *aſſiſtant maſter*, was the perſon alluded to by Mr. Bourne. See note on Ferris's affidavit in Appendix, and note on the ſame point in Mr. Sylveſter's argument.

† Mr. Bourne does not deny but the arrival of Mr. Spry was a fortunate circumſtance for Sir James Wallace, as he happily coincides with that gentleman in every thing. See the notes on Mr. Spry, and on his affidavit in Appendix.

he confirms the teſtimony, and removes the preſudice that might have been entertained—Mr. Stephenſon is in the Weſt Indies, or we ſhould have had his teſtimony likewiſe.

It is ſtated by Mr. Bourne, that Mr. Stephenſon the next morning made an apology to all the officers whom he had diſturbed the night before, particularly Mr. Bourne, requeſting his pardon—this fact I cannot deny but negatively.

Lord Mansfield. If the other facts are true you know the apology is impoſſible.

Mr. Lawe. If it had happened it muſt have been of ſuch a public nature in the ſhip, it could not have eſcaped notice.

The next morning Mr. Bourne ſays Sir James Wallace came upon deck with his eyes flaſhing fire, with his fiſts clenched in Bourne's face, and walking about the deck like a maniac, and then he gave his orders that he ſhould not walk upon the quarter-deck. This is Mr. Bourne's account. It is material to know upon which ſide of the deck they were. Sir James was walking then upon the larboard ſide, and Mr. Bourne upon the ſtarboard—that Mr. Bourne croſſed over, as it appeared to them, with a view to inſult Sir James Wallace—that he walked in a ſwaggering, menacing kind of a way, ſtaring him in his face, throwing his arms about to prevent his paſſing along, that Sir James Wallace was obliged to get out of Mr. Bourne's way, by getting upon the midſhip, where there is a little riſe in the ſhip.

One of the witneſſes ſays he was ſo near Sir J. Wallace, that if he had muttered any ſuch thing he muſt have heard it, and that no ſuch words paſſed, and he declares the injury, if there was any, was by Mr. Bourne's coming out of his way

to

to meet Sir James Wallace—all that fell from Sir James Wallace was a very temperate rebuke, and for this intemperate behaviour he called for his lieutenant, and ſaid my orders are, Mr. Bourne does not walk with me.*

If this is an injury, and if this intitled him to ſeek and hunt through all created ſpace for this gentleman, it is that kind of ſenſe of honor, which I, untutored in the ſchools of honor, am not very able to conceive.

I will not wander through the remains of the facts, which are ſo fully contradicted.

Lord Mansfield. The facts have all been gone through.

Mr. Lawe. In ſhort, what happened at Jamaica your Lordſhip will recollect the circumſtances of. Mr. Sylveſter ſtated before that Mr. Bourne talks of a three weeks tyranny being exerciſed over him—It was but ſix days that elapſed between the 24th of April and the 30th, the day of their arrival at Jamaica†—As to the inſtance of waiting for him in the duſk of the evening, ruſhing out of a negro hut, ſhewing his hand upon his ſword ready to fight him, and that Sir James Wallace refuſed him.

All Sir James Wallace ſays upon that head he never did challenge him; but if he did not challenge him, with all my heart, I am not ſo zealous for it to be believed he did challenge him—Let him feel the ſmart of it, Sir James Wallace feels different upon that ſubject from what I do. All the miſeries that happened on board that ſhip on board of which he ſailed—I don't mean to impute any

* See the affidavits of Lieutenant Monke, who was officer of the watch, and of Mr. Bourne, ſtating this fact, in the Appendix.

† It was ten days after the Warrior's arrival at Port-Royal that Mr. Bourne was removed from his oppreſſed ſituation on board that ſhip to Le Hector.

any want of the ſpirit of an officer in this gentleman, but he is full of ſpleen and malice to his fellow creature, and all that which is locked up in his breaſt he threw upon Sir James Wallace when occaſion threw him in his way—Occaſion he did not wait for, he ſought him at Bath—he ſent a waiter to him, the affidavit of which waiter your lordſhip has heard.

I will only obſerve upon one thing more, which is the circumſtance of the manner in which that challenge was continued. The invective contained in thoſe letters was ſent to him with a view to provoke Sir James Wallace to meet him—as ſoon as he had ſent the note, he retires to an apartment, and places a ſword which had been ſupplied by Mr. Webber, with a pair of piſtols, upon the table, and tells the waiter, if Sir James comes, to ſhew him them* —Was it meant that that was to be an honourable combat, it looks infinitely more like that offence which the firſt count of the indictment was calculated to meet, which in my opinion ſhould ſtill have ſtood †. The endeavour to encounter in private—the ſending for him to the Inn—having this ſword and theſe piſtols by himſelf, without the intervention of one witneſs, and unanimouſly conveys the idea laid in the firſt count of the indictment—Sir James Wallace did not chuſe to attend upon an anonymous ſummons; at laſt, the gentleman ſent word his name was Bourne—He choſe to abſtain from going, but conceiving the diſpoſition of Mr. Bourne towards him, warrant-

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* See Mr. Bourne's laſt affidavit, poſitively denying this aſſertion.

† Here we muſt take Mr. Lawe's expreſſion *literally*, and conclude he is "untutored in the ſchool of honour," and indeed of humanity, or could never have forced out of this fact, ſuppoſing it truly ſtated, which it is *not*, ſo diaboliſal a *conſtruction* as an *intent to murther*

ed him in all prudent caution— he puts his piſtols in his pocket, with no diſpoſition to commit illegal violence, there is hardly any man of prudence but would have done as he did—He met him, and he holds up a cane over his head—Sir James Wallace preſents his piſtol to preſerve himſelf from it.

There is not only looſeneſs but incorrectneſs, when Mr. Bourne tells the ſame ſtory about what happened. He ſays, I ſtruck him at Bath, and caned him, and upon being told Mr. Davis was an eye-witneſs, and ſaw the whole—he then ſays I did not ſtrike him, and he declared he would not ſtrike him from motives of perſonal prudence—But then he adds, what do you call not ſtriking —I held my cane over his head, and hit his hat —I don't know what they call not ſtriking him —He admits he had not, after he tells him he had.

There are in ſchools of honor different ideas of honor and juſtice than what we ordinary men entertain of them.

I have done with all the inſults and perſonal outrage—I will only anſwer this obſervation of Mr. Solicitor General's and Mr. Erſkine's, as to our being the aggreſſor.

If your lordſhip has attended to the affidavit of Mr. Abbot.

Lord Mansfield. I can tell you what it contains —He told him he would print it in the Papers.

Mr. Lawe. Yes.

Lord Mansfield. Then you ſee I have attended to it.

Mr. Lawe. Your lordſhip will recollect better than I, he told my lord Cork the ſame, that if he did not fight him upon the challenge, that he would

would ſend him, he certainly would put all the letters in the papers; then after that, to whom could Sir James Wallace impute the paragraph that appeared in the papers, to whom could any body impute ſuch a thing, but to the man who threatned he would publiſh—Sir James Wallace did impute it to him, and in conſequence of that ſuſpicion that aroſe in his mind upon the ſubject, did publiſh the letter, ſubject to ſuch reprobation. But ſays the Solicitor General, if ſuch a letter had been publiſhed by him, it would have juſtified him as a man, though not ſtanding at your lordſhip's bar as a criminal—it would have juſtified him if he had committed murder. He himſelf deſcends to this litigation in the news-papers, and at a long diſtance of time afterwards, when he knew there was a proſecution for that very libel before the court, and knew he would have had full and ample hearing upon it*, he then fell upon him, and treated him in ſuch a manner has been proved upon the trial. As to giving him a blow, a ſlight one would have anſwered the purpoſe to have ſtigmatiſed him; he did not content himſelf with that, for he gave him very violent blows, which impreſſes me very ſtrongly with an idea he meant ſomething more than merely to ſtigmatize him†.

*By what means was Mr. Bourne to know this? There were no ſteps whatſoever taken againſt him, and the term was nearly ended, and he had no notice.

† Mr. Coombe in his affidavit declares, that Mr. Bourne gave Sir James Wallace but one blow with a ſlight cane, before Sir James ſtruck at Mr. Bourne; and alſo that it was not Mr. Coombe's opinion that Mr. B. would have repeated it, had he not been induced ſo to do by Sir James Wallace. Mr. B's affida it declares the ſame, and Sir James Wallace, on the trial, acknowledged there was a cudgelling between them.

This gentleman, it ſeems, bore a good character when on board the ſhip called the Iris, and it is much to be pitied and lamented, that a gentleman who had ſerved on board the Warrior, and exhauſted all his good nature in thoſe veſſels, ſhould, as ſtated by Mr. Ferris, the moment he came on board, be the firebrand and deſtruction of their peace, that he endeavoured to ſink the commander in the eſtimation of them all. This gentleman has not yet completed his inſolence to the court, and I do beg your lordſhip to permit me to ſtate ſomething, which Mr. Solicitor General has upon this, as well as other occaſions ſtated, and which Mr. Erſkine has alluded to, which is, the approbation of all the marine corps.

Lord Mansfield. You need not go to that.

Mr. Lawe. That conſtitutes a very aggravated part of the caſe.

Lord Mansfield. It is highly indecent—That is not the point, they give their opinion without knowing the cauſe.

Mr. Lawe. I conceive that a court of honor, I am happy in not being educated in that court.

Lord Mansfield. A court of honor don't hear oneſide only*.

Mr. Lawe. Thoſe gentlemen that ſtand high in the eſtimation of their country, in their profeſſional character, may think of their own honor, but I would not for the world ſet my hand to that foul pen, which has condemned an officer in a matter of diſcipline and honor, and without hearing that officer, and knowing that he had no defence; let them think of their honor as they may, I have different ſentiments, and I am not aſhamed of mine.

* See *note to the reſolutions* of the marine corps, in the Appendix.

If your lordſhip ſhould think the matter urged in mitigation, inſtead of extenuating, aggravates and increaſes the crime. If you think the diſorder endeavoured to be ſpread in this kingdom, worthy reprobation. If your lordſhip thinks the outrage on your dignity and authority, deſerves ſome reparation, I hope in the puniſhment of this young man for theſe outrages, that he, and other unruly ſpirits, may know there is ſome force in the laws, and ſome vigour in the magiſtrates to execute them. I ſhall now take the liberty of ſaying ſomething upon puniſhment; as there appears upon this occaſion, ſo very numerous a body of candidates for their ſhares of merits, it may very fairly be inferred, theſe gentlemen will not be unwilling to participate in the puniſhment, and I beg leave to ſay, that ſuch puniſhment can only be a pecuniary one, to which they could bear a part.

Mr. Adam. After your lordſhip's time and attention has been taken up almoſt five hours to the caſe before you, I ſhould certainly abuſe the judgment of the court, and do no material ſervice to my client, Sir James Wallace, if I was to detain you with the detail of theſe extraordinary facts, and a minute detail of this ſingular hiſtory*, after what you have heard from the three learned gentlemen that have gone before me, with ſo much minuteneſs, and ſo much accuracy, and as much obſervation upon the ſubject as the ſubject merits—I ſhall therefore confine myſelf only to a few obſervations, from the nature of the caſe before your lordſhip, and to ſtate to you any particular fact, I think they might not have brought fully forward.

I will

* The ſingularity of the hiſtory Mr. Bourne muſt admit, for this is the firſt time, perhaps, that the captain of a man of war delegated the vindication of his honor to the ſubtlety of a law pleader.

I will beg leave to ſtate to your lordſhip, in the ſituation in which you are now, you are perhaps more ſingularly circumſtanced in this particular caſe, in ſuperintending over the peace of the country, than you ever was at any former period, for that has been brought into notice, and diſcuſſed before your lordſhip, which ought not to have been brought before your lordſhip. At the ſame time as the honor of the one man has been mentioned in the moſt emphatic terms, by the defendant's counſel, it would be improper and imprudent upon my part, and unjuſt to Sir James Wallace, whoſe honor ſtands recorded, whoſe military behavior ſtands exalted almoſt beyond any that this country knows, which country has been benefited by his ſervice, in defence of which, he has ſpilt his deareſt blood. I ſay, my lord, it would be unjuſt to ſuggeſt, that Sir James Wallace, who ſtands poſſeſſed of all that bravery, ſhould not have the ſame ſenſe of honor, and that it ſhould be told to the court by the gentlemen upon the other ſide of the queſtion, that Sir James Wallace's ſenſe of honor was not equal to Mr. Bourne's; upon the part of Sir James Wallace, it is my duty to ſtate, that Sir James Wallace was ready upon every occaſion to meet him in any way that was proper, but he never came to him like a gentleman*.

If I was not to ſtate that to the court, I ſhould betray the cauſe of my client, I ſhould betray this man, that ſtands as high in the eſtimation of his country, as the firſt naval character in the kingdom. Mr. Erſkine has ſaid, that if any perſon had treated him in the ſame man-

* See the affidavits of Captain Green, Lieutenant Peacock, Mr. Wier, Mr. Brookin, &c. &c. in the Appendix.

ner that Sir James Wallace has treated Mr. Bourne, he ſhould have followed Sir James Wallace through the whole creation of matter. Knowing his ſentiments of honor, and Mr. Erſkine's feelings, I know he would have done ſo, but he would not have come out of a Negroe-hut in the duſk of the evening to Sir James Wallace—He would not have ſent a waiter to Sir James Wallace with an anonymous meſſage, that a gentleman wanted to ſpeak to him, and previous to his coming, have told the waiter to direct Sir James Wallace to come to a dark room in a tavern—He would not have done that, but like a man of honor would have done it in the open face of the day, to have preſerved that honor, which has been proved with ſo much energy, to be dearer to any man than being ſubject to the puniſhment inflicted by the laws of the country for a violation of the peace.

I cannot help feeling warm when I find every ſpecies of the diſobedience of the orders of Sir James Wallace, for the reprobation of which Sir James Wallace has drawn upon him the reſentment of Lieutenant Bourne. Mr. Bearcroft has traced the cauſe with minuteneſs, which makes it improper for me to dwell upon the circumſtances, from the very period when Mr. Bourne came on board, down to the period of their arriving at Jamaica, when Lord Rodney refuſing the court-martial, ſeparated him from that man, whom Lord Rodney might well be ſuppoſed to have known he had behaved improperly to.

There is one material thing I ſhall obſerve upon, which is, there is not the leaſt reſentment ſhewn by Sir James Wallace in the firſt inſtance, nor the ſecond, but it is over-looked; at laſt he

ſends

ſends him an inſulting card, and not till then does Sir James Wallace ſay any thing to him in anger, and then there was no flaſhing of eyes, no clenching of fiſts, but calmly, deliberately, almoſt putting a reſtraint upon his own nature, and the nature of every brave man. Sir James told him, he could no longer hold any communication nor have any acquaintance with Mr. Bourne. Upon the ſecond inſult, after the inſult of the ward-room, what was the conſequence? There is a poſitive affidavit, ſtrengthened extremely by the circumſtances which have been mentioned, the maſter ſhould have been preſent, who is ſaid to have been preſent with Sir James Wallace, was in bed, having loſt his leg, which was ſhot off in the action of the twelfth of April*. There is another circumſtance which is not mentioned, which is the circumſtance reſpecting Lieutenant Markett's affidavit, who particularly praiſes Mr. Bourne's character, and talks of his conduct upon the twelfth of April—I mention this as a circumſtance tending to ſupport the veracity of our affidavits, and deſtroy the credibility of theirs; I don't mean to impeach the readineſs of Mr. Bourne to do his duty, or his courage, or what he performed on the twelfth of April, but I mean to apply it to the credibility of their affidavits†.

What is the caſe? Lieutenant Markett ſtates that he ſaw Mr. Bourne act that day with the greateſt ability and courage, the fact is, that day Mr. Markett was under arreſt upon account of bad behaviour on the 9th of April, three days before;

* See the notes on this point to the other arguments, and the notes on Ferris's affidavit.

† What does Mr. Adam mean? Does he mean that Mr Markett's approbation of his friend Bourne's conduct, is an impeachment to his credibility? Is approbation a ſource of perjury?

before; and another circumſtance, if he had not been under arreſt, as I am informed by men of the profeſſion, his ſtation is upon the poop, and Lieutenant Bourne's in another part of the ſhip.

Lord Mansfield. How does it appear he was under arreſt.

Mr. Adam. It appears upon the affidavits.

Mr. Lawe. He is in fact ſuſpended at this moment*.

Mr. Adam. That only makes my argument the ſtronger—I am now informed by Mr. Erſkine, who knows more of naval affairs than I do, if Mr. Markett had been under arreſt, he might have been in any part of the ſhip he pleaſed, and if not, he muſt have been upon his ſtation, which makes it impoſſible he could have ſeen Mr. Bourne, which enables me to ſtate the caſe more ſtrong on the credibility of our affidavits, againſt the credibility of their affidavits. In ſhort, I find myſelf, in the whole of this buſineſs, extremely deſirous at the ſame time not to injure the point of honor which has been talked of, but to bring a perſon to juſtice and puniſhment, or more properly to bring forward the fair and honorable character of Sir James Wallace, that it is impoſſible for me not to detain your lordſhips a few moments longer.

I ſhall beg leave to ſtate to you ſome circumſtances in regard to the letter of Sir James Wallace, which was not ſtated by the learned gentlemen before me. I am perfectly convinced, by ſtating this ſingle circumſtance, I ſhall totally take off the effect my learned friends may have made upon the mind of the court, with regard to the impropriety of Sir James Wallace's conduct in that reſpect. The fact is, there is a letter

* This is a falſe aſſertion.

ter in Mr. Bourne's own deliberate hand-writing; for Mr. Bourne, in his letter of the 7th of December, at Bath, in 1782, writes to Sir James Wallace, he ſhould expoſe him in the public prints; upon the 15th December the publication appears in the Morning Herald; upon the 20th Sir James Wallace's letter appears, and upon the 23d the libel, upon which Mr. Bourne ſtands convicted by not appearing.—Is not this the ſtrongeſt reaſon in the world for Sir James Wallace to have ſuppoſed, Mr. Bourne's written letter in his poſſeſſion, that Mr. Bourne was the author of this anonymous publication in the Morning Herald—Will any man pretend to ſay, a man of nice feelings, which Sir James, as a military man is, from the intercourſe I have had with him I know he is—Is it poſſible for him to feel any thing more pungent than public abuſe.—Was it not very natural for Sir James Wallace at once to fly to the public, to endeavour to vindicate himſelf before that public, before whom he was accuſed, and was it not natural, he ſhould, with this letter in his pocket, accuſe Mr. Bourne as the author of that ſcandalous publication. That circumſtance alone is ſufficient to take away that effect, which is ſuppoſed to be brought againſt my client, owing to that circumſtance of his having been accuſed of appealing to the public papers.

As to the libel, the hiſtory of the laſt war, and in ſhort, Sir James Wallace's whole life, is a moſt complete and poſitive denial to the aſſertions of that libel, and if the falſeneſs of the libel is to aggravate the crime, and increaſe the guilt, Mr. Bourne ſtands as the moſt atrocious offender of any man, in any ſituation or capacity of life.

In regard to the circumſtance of the aſſault, a great deal has fallen out upon that ſubject—If Mr. Bourne had had no other idea but that of

getting

getting Sir James Wallace to ſettle it in a manner the courts of law dare not take cognizance of, and which I am almoſt aſhamed again to ſtate to your lordſhip—If Mr. Bourne had deſerved that—The Solicitor General has told us, that there are circumſtances, by which a man of honor is more affected than by corporal pain, a fillip on the noſe is much more likely to bring about that end—Mr. Bourne was ſo much exaſperated in his mind, which made it totally improper for Sir James Wallace to meet him—Had not his conduct at Jamaica made it appear ſo? And it appears to be much aggravated by ſending that challenge which he did at Bath—I ſhall add only one circumſtance, which is, with regard to the motives which induced Sir James Wallace to come into a court of juſtice, and that is the reſolutions of the marine corps, that Sir James Wallace had done a thing which was totally improper, utterly improper, by bringing this matter before a court of juſtice, and it was hinted at, though not properly ſaid, by my learned friend, who opened this buſineſs, that his motives were vindictive*. I will venture to ſay, not only from all I know of Sir James Wallace, perſonally, but from all that appears upon the face of this caſe, that there is no reaſon whatever to ſuppoſe, that he had vindiction in the meaſures he has taken. Sir James felt himſelf aggrieved and inſulted by lies, which were told of him in every coffee-houſe and news-paper, he was refuſed to have that matter tried by a court-martial by the admiralty, it was not tried, for what reaſon I don't know; the time had not expired.

Lord Mansfield. That is the reaſon given, the time had expired.

Mr.

* How could Sir James Wallace's conduct be governed by the reſolutions of the marine corps, when it is evident from the date, as well as ſubject of the reſolutions, they were agreed to ſubſequent to the proſecution.

Mr. Adam. I believe Sir James Wallace applied for a court-martial within the time of the act of parliament to appoint a court-martial—The limits of the time, if I recollect, is one year after the return home. If it is not one year, it is more than one year—Finding himself barred in this method, what other opportunity had he of bringing it before the world, but by the means which he has taken.

My lord, I will venture to detain your lordship one moment, with a few words, which are much more emphatical, and much better expressed than any thing I can state to your lordship. I will state the words of Lord Chief Justice Scroggs, against whom several libels were published in 1675, he said, in his speech upon that subject, in this court, "first, I would have all men know, I am not of so revengeful a nature, or so nettled at aspersion, but I would pass by this and more, but so much has passed, which reflects, to transpose the words upon *the subordination of the navy*, as well upon my private character, it is my place to defend the one, and a duty I owe to my reputation to vindicate the other.—These words of Lord Chief Justice Scroggs are applicable to Sir James Wallace*.

S I shall

* The learned barrister, I presume, having found the arguments in aggravation exhausted, by the ingenuity of those who preceded him, turned into the road of retrospect, and travelled so far backwards as the year 1675, for new matter. He thought it better, perhaps, to cite any case than no case; but it is rather surprizing how he could be induced to bring into junction, two characters so incongruous, taking them in the abstract, as a lord chief justice of the King's-bench, and a captain of a man of war. Where lies the similitude between Sir James Wallace and chief justice Scroggs? Is it possible that the chief justice, in his professional line, could adopt the language of Sir James Wallace, could call one of the puisne judges a scoundrel, or clench his fists at him with a damn, or cry out to the marshal of the court, "it is my orders, that judge Nokes, or judge Stiles, judge Doe, or judge Roe," which ever of them might have offended him, "shall not sit on the same side of the bench with me." Surely it is not; and yet Mr. Adam, by a kind of legerdemain

I ſhall only add further, to convince the world, vindiction has no hand in this buſineſs, but merely a juſtification of Sir James Wallace in the eyes of the world; if Sir James Wallace had been inclined to have brought an action inſtead of an indictment in this caſe, it is probable, an Engliſh jury, feeling for the injury done to Sir James Wallace, who has ſerved his country ſo bravely, and been hurt by ſo daring an aſſault, as was made upon him, it is but natural to ſuppoſe, that jury would have vindicated the rights of Sir James Wallace, by ſuch damages as Mr. Bourne could not have anſwered for*. If any other motive than his juſtification required it, it would have been eaſy for Sir James Wallace to have taken that line. But if he had taken it he would have diſhonoured himſelf, as he ſays, but by taking this line, he has done no more than what is neceſſary for every man for the reparation of his honor. He finds the conduct of that individual with whom he muſt combat,

main, a novel ſpecies of hocus-pocus logic, beyond any other inſtance of law-fiction, introduces the ſubordination of the navy into a court of law; diveſts Sir James Wallace of his naval uniform, unbuckles his ſword, ſtrips him of his military character, and cloathing him in purple and ermine, and covering his head with a tremendous perriwig and black patch, he places him upon the bench of juſtice, arguing for his reputation in the words of lord chief juſtice Scroggs. It is not poſſible to be ſerious upon this point of ludicrous compariſon; the caſes are not at all analogous. By Mr. Adam's ſtatement, poor Scroggs had been repeatedly libelled, whereas one publication only, appeared againſt Sir James Wallace, and that he brought upon himſelf, as his leading counſel admitted, by being the original libeller—The navy and the army will however thank Sir James, for ſtating by his legal ſecond a law precedent of an hundred years old, to ſhew them, that when their "reputations" are attacked, it is their "duty" not to draw their ſwords in its "vindication," but to apply to a ſolicitor to draw his pen, and inſtead of going into the field, meet their opponents, challenge by indictment, and fight them at the point of an affidavit, in Weſtminſter-hall.

* It is more likely that an Engliſh jury would have conſidered the provocation and the diſpute was between two men, profeſſing the character of ſoldiers, and that inſtead of giving large damages, they would have followed the example recently ſet them by a jury in Yorkſhire, who gave but two-pence damages a gainſt a gentleman of the bar, for knocking two teeth out of a fellow's head who gave him the lie,

combat, in point of honor, ſuch, as to make it almoſt too dangerous for him to enter into that ſituation with him, ſo as to maintain it by that means, which the laws of honor have laid down.

Mr. Solicitor-General in Reply.

My lord, in this late hour in the day, it cannot be expected I ſhould go very minutely into the circumſtances ſtated by my learned friends. I ſhall not do it, though I haſtily looked over the affidavits which have been read, not being able to hear one word of them from the officer, I truſt, if I do not perfectly miſtake it, all my learned friends have endeavoured to avail themſelves of a great number, I ſuppoſe, and I dare ſay, actual contradictions, and even if they were true, I ſhould not have expreſſed myſelf with all that ſtrength of language which my learned friends have done. They do not appear to have made much impreſſion upon me.

In the firſt place let us ſee whether in the nature of the thing it is poſſible, that my client's caſe, conſidered as a matter of fact, is either contradicted, or can be materially contradicted.

Now let us ſee what this fact is; the fact alledged againſt Sir James Wallace upon the part of Mr. Bourne, is, that in the uſe of his authority, he has commanded over him, and treated him with great rudeneſs, incivility and oppreſſion; he ſtates the circumſtances in which that rudeneſs and oppreſſion conſiſts—He ſays, he had all the appearances of a man in a fury; that his action and geſture the moſt affronting, that his language and his conduct upon it, were moſt illiberal, and in this

he is confirmed in ſo many words, by the only witneſs who was preſent, that is, Lieutenant Monke, who ſits here in court, uncontradicted by any body, and incapable of being contradicted by any body, for no body elſe was there as a witneſs. I am putting the caſe of Sir James Wallace and Mr. Bourne, as a caſe of witneſſes contradicting one another, and concerning whoſe teſtimony your lordſhip muſt decide—Lieutenant Monke ſtates, that no mortal man, (and your lordſhip muſt hold Mr. Monke and Mr. Bourne to be perjured if it is not true) that no mortal man could help feeling for ſuch great inſult, injury and oppreſſion--(When he comes to Jamaica--Your lordſhips muſt not ſuppoſe we are in a land of fairies, and men are ſpeaking of things that don't happen in human experience) This gentleman applies to Lord Rodney, for a court-martial upon the particular articles of war, which expreſsly refer to cruelty, oppreſſion, and un-officerlike conduct. He demands that reparation, he feels himſelf inſulted from people there—He feels he is inſulted and degraded, and he acts accordingly.

I will aſk, upon the face of the tranſaction, which is the moſt likely, for Mr. Sylveſter, and Mr. Lawe, and particularly Mr. Adam in more general language, ſeem to take it for granted, this is all fiction and invention, which if it be true, Mr. Bourne's conduct is totally inconſiſtent with every thing that has happened in the world. Would any man think, that he would require a court-martial upon any thing that was not indecent or improper, and only for ſaying you ſhall not walk with me, for that is all which the gentlemen ſay, Sir James Wallace ſaid.

It is a very incredible ſtory, an exceeding incredible ſtory, that for this Mr. Bourne ſhould

ſhould go and demand a court martial upon him; beſides this, Major Varlo, and all the reſt in their affidavits, acknowlege this is totally inconſiſtent with their caſe, but it is not ſo with ours, for from that moment the gentleman felt himſelf degraded and ſunk, he ſpoke of himſelf as a priſoner from that very moment, and he ſays ſo himſelf, and Mr. Monke, who was preſent at the time, tallies with the account, which is totally irreconcileable with the recollection I have. I don't think proper to uſe the language gentlemen upon the other ſide have thought proper to uſe; Mr. Bourne, if he has ſuch feelings as I have given him credit for, muſt have ſuffered much more from the language he has heard this day than any thing that has been done before.

He has been repreſented by ſeveral of the learned gentlemen as not only making an affidavit with not a word of truth in it, but as a perſon never to be kept company with by any man from this moment, ſo long as he lives!—A very pretty predicament he is in!—Had he acted otherwiſe he is to be expelled all human ſociety, and having acted ſo he is to be expelled it likewiſe.

Your lordſhip will ſee when you have compared the affidavits in abundance of inſtances, not only having credibility, plain reaſoning, and facts upon his ſide, but he is confirmed by many witneſſes, whoſe credit your lordſhip is to decide upon, as well as thoſe that have contradicted him.

In my opinion there is an affectation of treating this caſe, as totally contrary to the real merits of it with a certain ſpecies of anachroniſm, confounding all ideas of times, by which it ſeems Mr. Bourne is ſuppoſed to be a very great aggreſſor—Sir James Wallace not at all.

Let

Let us ſee what he comes to receive judgment for: he is called up to receive judgment for a libel publiſhed on the 23d of December, and he is called up for an aſſault which happened after that period.

Now let us ſee what was the ſituation of Lieutenant Bourne at the time of each of theſe offences—I am bound to conſider them as offences, when each of them were committed? My Lord, at the time a libel was publiſhed, as it is called, it is admitted now before your lordſhip, to have been publiſhed to the world by this letter, under the ſignature of Sir James himſelf, wherein he ſays Mr. Bourne is a vain boaſter, and a notorious liar—I don't mean to ſay thoſe are the exact words, but falſe aſſertions ſeem to me to mean the ſame thing—a vain boaſter and a notorious falſifier, if they like that word the better, and a man who gives himſelf an air of having aſſumed the conage of a gentleman, without any pretence or foundation in fact.

That is the fact publiſhed by Sir James Wallace.

My learned friends ſay this for him, and it is very differently argued by the different gentlemen—Mr. Bearcroft ſays, why I am aſhamed of his having done ſo, and he is aſhamed of himſelf, but he did it in a fit of irritation.

Now, ſays my learned friend behind me, why he did wrong certainly, but he thought he was doing right—He thought ſo, he made a ſmall miſtake—He thought he was repelling the injury of Lieutenant Bourne, and the truth is, they admit no injury had been committed by Lieutenant Bourne, but he thought ſo, and he had reaſon to think ſo, for Lieutenant Bourne had ſent him ſe-

veral

veral challenges, they will not admit meſſages, there were ſeveral civil meſſages at laſt, one in which he had given him notice he would print ſomething; Sir James Wallace ſeeing ſomething in print, jumped to the concluſion that Mr. Bourne was the author of this libel—What then, is Sir James Wallace to abuſe my client, and hurt him in the tendereſt point, and afterwards to ſay in this court, I formed a wrong judgment, I conceived Mr. Bourne was the libeller, and I choſe to turn libeller myſelf—Now I don't think ſo, but now that I know I libelled him, and he not me, I may proſecute him ſtill as the libeller, for I have got him to be a libeller, though he was not one before, *aut inveniam aut faciam*, is the language of Sir James Wallace, I have wrote ſuch a paper upon him as would have moved the apathy of a ſtone, if his heart was as ſtoney as a flint, it would have drawn out of it theſe words of reſentment and anger which you read in this paper.

Who has been the libeller?—I do ſay with great deference upon this head, I am not at all appalled by all that I have heard from my learned friends upon the ſubject—It is now an admitted fact, that before Mr. Bourne had publiſhed a word or line upon Sir James Wallace, he had attacked him as a man deſtitute of courage, who ſtill boaſted of courage, and a man that expreſſed his willingneſs to fight Sir James Wallace, tho' I can demonſtrate, ſays Sir James, I was ready for him at Jamaica, Bath, and London, he was a pretender, and whoever takes him to be a man of that ſpirit and character, he is a liar and miſtaken. Mr. Bearcroft, with great candour ſaid as to the matter of libelling, I do think it is an anſwer to the charge of a libel.

My

My learned friends behind me ſeem to think it quite a different thing—Says Mr. Adam and Mr. Lawe, as Sir James Wallace thought Mr. Bourne the author, though he was not, he had a right to treat him as the author, and he did what was perfectly juſtifiable.

I have no conception of the argument, Sir James Wallace himſelf don't admit it—there is no pretence of evidence, Mr. Bourne provoked or cauſed it—there is nobody will ſwear there was the leaſt privity in Mr. Bourne to that which Sir James Wallace now alledges to be the provocation.

Then he is the aggreſſor, and of the utmoſt importance and magnitude to this man—I ſaid it before, and I ſay it again, your lordſhip muſt know it, whether theſe opinions are correct or incorrect; it was impoſſible for Mr. Bourne to live in England in his ſtation, publiſhed by a man of Sir James Wallace's character, to be a coward of this rank. It is not for me, I will not follow the example of my learned friends, by traducing the character of Sir James Wallace, as they have Mr. Bourne's—I ſaid before, I know nothing of his character, he may be very illuſtrious, I have heard a great deal of commendation of him and nothing of reproach; it is not my intereſt to pull down Sir James Wallace—a ſhaft thus envenomed out of ſuch a quiver, will do double execution, whether it comes from Sir James Wallace's mouth, or a mate, or a common man on board the ſhip it is very different, he might have affected to have deſpiſed it, but he could not deſpiſe this, coming from ſuch a quarter, and ſigned by his name—It was a call upon him, and in my apprehenſion,

apprehenſion there is not a man living that would not have ſaid, he is numbered with the dead if he don't anſwer it; and I am ſure, addreſſing your lordſhip, I don't mean to lay down any thing contrary to the ſtricteſt rules of juſtice —I might ſay, ye prudes in virtue, what would you have done?—You could not have done any thing elſe.

I conſider this aſſault of Sir James Wallace, as my client conſidered it undoubtedly—This paper, publiſhed by Sir James Wallace, is an experimental criſis—I am publiſhed to mankind as a poor, miſerable, contemptuous man—I muſt acquit and clear myſelf of this imputation—live or die. My learned friend calls this a high hand of violence, that calls for the chaſtiſement of this Court!—A high hand of violence!—I ſay it is what the law calls ſelf-defence. A man cannot do that for his reputation, from a ſenſe of honor that he can do to his little finger, or his little finger nail—This is the principle that obliged Mr. Bourne to do what he has done—ſays he, if I don't do that which ſhall leave Sir James Wallace no poſſibility of repreſenting me as a man that declines perſonal combat, and ſo far deficient of perſonal courage, I cannot live any longer, therefore I do it, be it ever ſo irregular, it is in obedience to his call of reputation, and of ſpirit, and of honor, to which he has pleaded guilty.

Your lordſhip heard a great deal of that rudeneſs, indecency, and indelicacy and outrage upon the court, committed by reading a great number of affidavits—I will ſay a word or two upon this ſubject, becauſe I am very ſure no outrage upon the court was meant—I do not contend that all

that cauſe of vengeance is exceedingly miſplaced upon the perſons that made the affidavits—with your lordſhips permiſſion, I will ſpend a moment or two in ſhewing why—My lords, the grounds (ſays Mr. Bourne) why I did this is, that Sir J. Wallace has attacked me untruly, that is Mr. Bourne's caſe, for ſays he, he has ſhewn I declined to meet him, and that I never would come to the point—never would. What ſays Mr. Bourne to this, ſuppoſe it had happened in dialogue, as it muſt have done?—Why, Mr. Webber, you know ſomething of this matter—Am I open to this repreſentation, or am I not—You know what paſſed at Bath—have you any ſcruple to do that which is your duty—who if not innocent in the eye of the law, yet is not guilty in that ſenſe that is imputed to him—Will you tell the court the truth, and how that was—I might be deficient in prudence—I might be deficient in reverence to the law, but was I deficient in point of perſonal courage, aye or no?—Why the gentleman ought to anſwer it—I may have been a particeps crimines with you in that which was not right, I might have paid more attention to the duty of a ſoldier than to the duty of a citizen, but I owe you the truth—every body muſt know how far it was calumny or truth, and in the courſe of a legal judicature, this man ſwears to a tranſaction in which he was a part—he ſtates it, and ſwears to it—He ſtates it correctly as it was—We live in ſtrange times if this is ſuppoſed to be an offenceagainſt the rules of juſtice.

Lord Mansfield. He does not ſtate the fact, but gives an opinion of fact—the court takes an opinion from nobody of fact. He gives his opinion in words upon the fact.

Mr.

Mr. Solicitor General, He declined, he ſays, to give him any advice upon the ſubject—He adviſes him to conſult Colonel Heathcote, whom he does conſult, and he declined for the ſame reaſon, and then he gives a general reaſon why Mr. Bourne acted with propriety and ſpirit, and as far as he could judge he could not do otherwiſe—Mr. Lawe attacked Capt. Webber, and ſaid he goes with a challenge to Sir James Wallace. That he approves of the letter, and that he is a party to the challenge, and he abets this act. What is very material to this (as a miſtake may happen) Sir James Wallace ſays at Bath he never would come to the point, and all this affidavit is made with a reference to this ſuppoſed libel, which puts Mr. Bourne's conduct in iſſue in this very buſineſs.—Says Mr. Bourne, don't you know Mr. Webber, right or wrong the truth muſt come out, ruat cœlum. I may be cenſured as to this—The court of King's Bench ſaid I wanted decorum, but they ſhall not ſay I was a coward, they ſhall not ſay it upon Sir James Wallace's evidence at Bath, or any were elſe—theſe witneſſes know every ſtep of my conduct, and every word I ſaid and letter I wrote—this muſt not be permitted to go into the world without being explained, therefore tell us how it is.

I ſhould be apt to ſuſpect my own feelings upon it, but I think Mr. Bourne, knowing he has treſpaſſed, and in what place, and to what degree, feeling he has a provocation, that no human being that ſuſtained a character could poſſibly ſubmit to—I think it was his duty, if the witneſſes were living upon any habitable part of the earth, to bring them forth to ſay I may have many faults, paſſions, and errors, but I will

not be ſtained with the ſhame of a coward—that is all theſe affidavits are made to prove—that is the whole that theſe gentlemen were called upon to prove in this court—Your lordſhip will ſee it in every page of the affidavits, there is no pretence to impute it to any thing elſe—this man being charged with an offence ſo fatal to his reputation he publiſhes an account of all that paſſed, and he calls theſe witneſſes that know every ſtep of the tranſaction to prove it. That is the thing they are called upon for to give an account of what paſſed at Jamaica, Bath, and London.

Now, my lord, I do think I can, and I will reſt the caſe with your lordſhip upon that ſingle iſſue—Can your lordſhip ſay that Mr. Bourne has been too alert in provoking Sir James Wallace to perſonal combat? or has he been, as this paper and publication of Sir James not only inſinuates but expreſſes in this flat way, tardy and puſillanimous in his character, and never would come to the point, either at Jamaica, Bath, or London.

All my learned friends go upon juſt the contrary idea, they juſtify Sir James Wallace in a great length of argument, for not condeſcending to meet this gentleman in ſingle combat—Sir James Wallace diſdains that ſort of argument, non tali auxilio, ſays Sir James Wallace, you vaſtly miſtake me, if you think I will avail myſelf of being the Captain of the ſhip, and he the Lieutenant of marines—I was always ready to meet him at Jamaica, Bath, Briſtol, London, Aſia, Africa, and America, always ready to meet him, and armed with a complete juſtification for the buſineſs—I wonder my learned friends did not lay their heads a little more together before they opened his defence, for this gentleman makes

makes it his defence, I have proof of it—There was no time I was not ready to meet him.

The gentlemen ſay, what a cowardly thing was it to ſend to him to meet him in a dark room at Bath, and to come alone—Who invited him to come alone?—That is all fiction, Sir James Wallace might have brought his whole crew with him if he would—there was not the leaſt hint of any thing like it—If the gentlemen had meant an aſſaſſination it was all wicked, and they are all reſponſible—There is not the leaſt ſhadow of a proof of it—there is not the leaſt excuſe for Sir James Wallace, the publication of Sir James Wallace's calls upon Mr. Bourne to ſhew whether he was or not active in this buſineſs.

It ſays, I impute it to you that you was ſlack. —In anſwer to that imputation, Mr. Bourne was called upon to anſwer it—by calling upon him to anſwer one crime, Sir James Wallace obliged him to reveal another, in order to avoid the offence and imputation of cowardice—he obliged him to ſay perhaps, I have been more ready to meet Sir James Wallace than I ought to be. But you ſee he, Sir James Wallace, wanted to drive him, he ſaid you never will follow me—I went from town to town, and place to place and now there is an end of it I will ſeek him no longer—I will wait for him no longer—I will publiſh him to all the world as a coward, for behaving in that abject manner.

This caſe your lordſhips have to decide—I have never ſaid he was innocent—the ſituation of the caſe precludes me from any ſuch thing—The degree of guilt your lordſhip is to find, and your lordſhip is to puniſh; but this I know, whenever this paper is read, and wherever it is read,

read, this caſe of Sir James Wallace's, eminent as he is, and the more for that eminence, every man of honor, every gentleman, every ſoldier, every living, ingenuous man will feel that that ſpirit of honor which is a vaulting principle, and cannot be reſtrained from treſpaſſing the limits and bounds of decorum, when there is an imputation, that if it is not repelled it ſtrikes a man out of every thing reſpectable and worthy in ſociety that is to be maintained.

In that ſituation Mr. Bourne ſtands before your lordſhip. I hope he has done nothing that wiſe and good men might not have done, and would not have done in the ſame circumſtances. That he has treſpaſſed againſt the laws of his country, I am very ready to admit, but he did it with a degree of provocation not in his power, or the power of human prudence to prevent.

Lord Mansfield. Let him be committed we will look over the affidavits that are very voluminous —at preſent I will order him to be brought up again on Tueſday—There is one fact, I don't know that it will vary this caſe, there are a great deal of evidence that Bourne meant to fight Sir James Wallace, to ſend him a challenge, but I don't ſee any inſtance of his ſending or giving a challenge to Sir James, appointing time or place, or where they might each have a ſecond.

Mr. Juſtice Willes. Have you the paper of the 15th December, which Mr. Bourne denies publiſhing.

Lord Mansfield. I have the impreſſion of it in my mind from one of the affidavits.

Mr. Juſtice Willes. When Sir James made his publication, he meant to anſwer that as coming from

from Mr. Bourne, now Mr. Bourne ſays it was publiſhed without his privity or knowledge.

Mr. Solicitor General. There is no diſpute about that.

Lord Mansfield. We want the contents of the publication—there is a letter to Sir James Wallace from Bourne, ſaying he will print in the papers his letters which he ſent to him, which letters to be ſure contain every ſort of abuſe. He declares over and over again he will print them all in the papers, now we want to ſee the letter which he took to have come from Mr. Bourne.

Mr. Lawe. That is in the indictment.

Mr. Juſtice Willes. That letter of the 15th of December is not in the indictment.

Court adjourned this caſe to Tueſday the 8th inſtant.

TUESDAY, *July 8th*, 1783.

This day Lieutenant Bourne *was brought into Court, attended by the Marſhal, to receive judgment, when Mr.* Juſtice Willes *read the following Exordium and Judgment.*

You, Charles Bourne, are brought up here to receive the judgment of this court for two offences.

For a violent aſſault upon Sir James Wallace, for which you was indicted, upon which indictment

ment you have been convicted, and for publiſhing a falſe and ſcandalous libel, upon which you have confeſſed and ſuffered judgment to go againſt you by default.*

I ſhall conſider theſe charges ſeparately, as they require, and they will receive very different judgments.

As to the aſſault it is a matter of ſerious and important conſideration, as almoſt ever came before a court of juſtice. †

It was a cruel and wanton attack made by an officer in the land ſervice upon an officer in the navy; ‡ it was a high inſult offered by an inferior to a ſuperior, preceded by a variety of other circumſtances. § It was a quarrel which originated from an incident which happened during the time you was on board his majeſty's ſhip the Warrior, under the actual command of Sir J. Wallace.*

This therefore is a caſe in which both the diſcipline of the army and navy are deeply concerned, and which will deeply affect that ſubordination which neceſſarily is due from perſons under

* Mr. Bourne in ſuffering judgment to go againſt him by default, by no means intended to confeſs that he had been guilty of either *falſhood* or *ſcandal*; but merely the *ſimple fact* of publiſhing, and he finds in the letters of Junius, that the court of King's Bench conſider *truth* as no juſtification in caſes of libels, and that the ſimple fact of publiſhing being proved it is unneceſſary to prove the *intent*, or to ſhew that the libel was *falſe* or *ſcandalous*

† Mr. Bourne muſt here obſerve, that he was tried as a citizen for a breach of the common law, as a citizen he was convicted of a common aſſault upon a fellow citizen, and if the records of the courts are to be believed, many matters of equally ſerious and important conſideration have come before them, though no ſuch cruel and unuſual puniſhment as that under which he ſuffers, can be ſhewn ſince the revolution.

‡ It has long been the boaſt of this country that the peaſant and the ſquire are on a footing, when applying to the law for redreſs of grievances, and that the rank of perſons was not to be conſidered in the diſtribution of juſtice.—See Lord Mansfield's *dictum* in the caſe of Lord Groveſnor againſt the Duke of Cumberland.

§ The circumſtances alluded to by the learned judge are what Mr. Bourne reſts his juſtification on.

* It is clear from the affidavit of Mr. Murphy, in the Appendix, that the reſentment on the part of Sir James Wallace originated in his quarrel with that gentleman at Whitehall.

under command to their commanders, and which muſt be inevitably preſerved to keep up any order or authority whatſoever*.

The matters to be enquired into are, the nature of this aſſault, and the extenuation which has been offered upon your part to mitigate the offence. Theſe have been of two ſorts. The provocation you received from Sir James Wallace, and the ſuppoſed laws of honor, by which you were induced to become the avenger of your own wrong, in order to avoid what you call diſgrace. Falſe and chimerical notions of honor receive no countenance or indulgence from this court, it is contrary not only to the laws of God and humanity, but to the municipal laws of this, and every country throughout the globe.

I ſhall, in paſſing judgment upon your conduct before I finiſh it, conſider you in the light of what is faſhionably, though untruly, called a man of honor.

As a military man and a ſubject of diſcipline, you ought to know, it is the eſtabliſhed rule during actual ſervice, an inferior officer ought to be obedient to a ſuperir officer, and muſt, without reſerve, obey all his commands which reſpect the duty in which you are engaged†.

I underſtand likewiſe, and I have enquired of perſons of great rank and knowledge in the military line, that after the ſervice is ended, it is ge-

U nerally

* Had Mr. Bourne offended the rules of diſcipline, he would have been tried before a court-martial, which the legiſlature has veſted with ſufficient power to protect itſelf; but his conduct as a ſoldier was not reprehenſible; it was as a citizen he offended againſt the common law, therefore he was tried at Weſtminſter hall, where he however was not only puniſhed for a breach of the peace, as a citizen, but as a ſoldier for a breach of military diſcipline.

† Mr. Bourne preſumes that no part of his conduct could have induced the learned judge to think, that he was a ſtranger to this, or did not ſtrictly obey it. Thoſe he has ſerved under have teſtified, that he never infringed his duty, by omiſſion or tranſgreſſion.

nerally conceived the ſuperior is not to anſwer to the inferior for any act done by him as commander, for two reaſons; if they were, no public ſervice could be performed by perſons that have the direction of it*.

For inſtance, could any general of any army, admiral of a fleet, or captain of a ſhip, go out upon any expedition, without having under his command, one or more violent, wrong-headed, intemperate young men, who in the heat of blood, may conſider a reaſonable order, juſtifying reſtraint, as a perſonal inſult, and may conſtrue a warm expreſſion, the reſult of command of his ſuperior, as an affront; that in the return from ſervice they ſhould be obliged to purſue them through all created ſpace, to obtain ſatisfaction for this ſuppoſed inſult†.

Sir James Wallace ſeems to ſtand pretty much in this ſituation, and if this extraordinary idea was to be encouraged, I know few that would wiſh to be entruſted with command.

The ſecond reaſon is, there is another remedy at hand you might have had, without the leaſt loſs of honor, ſhadow of imputation, or tarniſhing your courage. The inferior has a right, if the ſuperior has miſbehaved himſelf in command, to call him before a court-martial, and have his conduct enquired into.

The

* Mr. Bourne called upon Sir James Wallace, not as his ſuperior officer, but as a private gentleman. When officers are not on duty they are peers, becauſe they are gentlemen, and if a ſuperior, ſhielding himſelf with his ſituation, forgets what he owes to his inferior in ſtation, that inferior, as a gentleman, will, when from under his command, act as Mr. Bourne has acted, and as Mr. Bourne would again act under the ſame circumſtances; chaſtize the tyrant for his inſolence in office; and on this point will truſt the deciſion of a court-martial.

† Does the learned judge mean to inſinuate here, that a Britiſh officer ſhould tacitly ſubmit to the epithet, ſcoundrel, or that a clenched fiſt to his face, does not require an explanation, and is only a ſuppoſed inſult.

The remedy you yourſelf applied for, and Sir George Rodney did not think it adviſeable to call a court-martial. He immediately ſo far redreſſed the grievance complained of, he removed you from under the command of Sir James Wallace, with whom you ſeemed not to be upon good terms*.

In weighing the ſentence which is to be paſſed upon you, this court, having ſtrongly impreſſed upon their minds, the ground of reſentment againſt Sir James Wallace, which was a ſuppoſed affront received from him, while under his command, and for which you have ever ſince continually purſued him, with ſo much acrimonious and vindictive aſſiduity—If this ſupreme court of juſtice was, in the puniſhment to be inflicted upon you, to omit the conſideration of this material part of your caſe, it might properly be objected to us, we were relaxing the diſcipline of the army, the navy, and of all due ſubordination amongſt the military, in the puniſhment of a delinquent under your deſcription†.

A regard muſt be had to obedience throughout the whole of the military eſtabliſhment, and care taken to preſerve it.

By the affidavits that have been read in court, your conduct as an officer has been endeavoured to be extenuated.

I ſhall now conſider the nature of the aſſault, which, as proved by Sir James Wallace upon the trial, was a violent blow, given with a cane,

* The learned judge has omitted to conſider, or at leaſt to ſtate, that the admiralty refuſed a court-martial to Sir James Wallace, though, as appears by Mr. Adam's arguments, he applied in time.

† The military law is as fully inveſted with power to puniſh military delinquents, as the court of King's-bench is, to puniſh an offence againſt the civil law.

which cut through his hat and the leather of it, and ſtunned him, and ſo contuſed his head, which if it had fell upon the middle of it, might probably have killed him*.

This evidence is likewiſe confirmed by the evidence of Mr. Farquhar, the ſurgeon.

Was this the attack of a gentleman, wanting only the vindication of his honor? or was it not rather an act of violence, committed by a perſon loſt to all ſenſe of humanity. And this barbarous behaviour, was preceded by ſuch impolite words as, you ſcoundrel; though Sir James Wallace had not given him the leaſt provocation†.—In this part of the caſe I conſider only this ſpecific identical aſſault, of which you have been indicted and convicted.

When I come to your extenuation of this fact I ſhall have an opportunity of making my remarks upon every thing that led to it.

Conſidering the aſſault ſimply by itſelf, it was a moſt notorious violation of the peace; a blow given in the broad day, in the open ſtreet‡, by one gentleman to another; it was a caning, which, according to the laws of honor, no ſubmiſſion can expiate, and if the marks that were left, cannot be conſtrued as an attempt to murther

* Mr. Bourne has been informed by an eminent anatomiſt, that the top of a man's head is the thickeſt part, and of courſe the leaſt liable to material injury. The learned judge deals largely in probabilities, and aggravates the defendant's conduct, upon ſuppoſition; "if," ſays his lordſhip, "the blow had fell upon the middle of the head, it might probably have killed him;" he might as well have ſaid, if it had been run into his eye, it might probably have blinded him, &c.

† This epithet, ſcoundrel, coming from Mr. Bourne, is conſidered as highly offenſive, but in coming from Sir James Wallace, in open court, it was paſſed over without the ſlighteſt animadverſion. See Mr. Mac Nally's arguments in extenuation.

‡ Does the learned judge think, that the chaſtiſement of Sir James Wallace would have been a milder violation of the peace, had it been inflicted under the ſhade of night, in a narrow dark alley?

ther, ſtill the dark and black deſign was but too viſible*.

Can it be juſtified? No.—Your counſel did not begin to do it, till ſome of them with an improper zeal for your ſervice, loſt themſelves in the ideas of chivalry, and adopted the chimeric notions of knight-errants.

This brings me to what was offered in extenuation.—This involves me in ſuch a quantity of of affidavits, loaded with ſo many contradictions and falſehoods, I am afraid it will be with difficulty I ſhall extricate myſelf from it. I ſhall reduce them to ſeveral heads, and if I can, ſhall endeavour to draw truth out in its purity.

I paſs over the affray between Sir James Wallace and Mr. Murphy, which happened in Auguſt 1781. In the account of which, you are pointedly contradicted by Sir James Wallace, and Mr. Sleigh, and to a degree, by Mr. Murphy's letter in September†. Indeed I ſee no cauſe of introduction of thoſe epithets you made uſe of, unleſs it was to raiſe an idea that Sir James Wallace had entertained ſome prejudices againſt you before you came on board.

How is it ſupported? When you came on board the ſhip, at Portſmouth, you obtained leave to go to London for three days, though you ſtayed fifteen. Sir James Wallace winked at your conduct—You mentioned in your affidavit, your anxiety to get rid of a man, whoſe conduct had not impreſſed you with any favorable ſentiments towards him, and you deſired to change place with ſome other officer.

What

* Why does the learned judge urge ſuch an intent, when Mr. Bearcroft fairly cleared the defendant from entertaining any ſuch deſign.

† See Mr. Murphy's and John Jackſon's affidavit.

What ground was there for this? Lieutenant Spry ſwears you frequently expreſſed to him, how exceedingly happy you was, in having been ordered on board Sir James Wallace's ſhip, and that you had the higheſt opinion of, and reſpect for him, and would not for any conſideration have miſſed the chance of being ordered on board his ſhip*.

The ſubſequent charge ſhews there was no animoſity ſubſiſting between you till your arrival at Madeira, and though you ſuggeſt by your affidavit, ſeveral inſtances of outrage and unofficer-like behaviour, in your paſſage from London to Jamaica, you ſpecify none, till you come to Madeira.

Your complaint afterwards may be reduced to three heads.—

Firſt, Sir James Wallace not introducing you to the Governor of Madeira.

Secondly, His behaviour towards you, relative to the diſturbance and putting out the lights in the ward-room, on the 23d of April.

Thirdly, His prohibition the next day, that you ſhould not walk on the ſame ſide of the quarter-deck with him.

As to the firſt point, in not introducing you to the Governor of Madeira. what does your commanding officer (Varlo) ſay? You had no right to complain of this, as none of the other officers were introduced to the Governor. That Sir James introduced you, with the other officers, to the Britiſh Conſul, Mr. Murray, where you dined. And what was your behaviour there? After you had

* See the affidavits of Lieutenants Monke, Markett, and Cribben, in Appendix. And it is to be remarked, that on this point the proſecutor's witneſſes contradict each other, for ſome ſwear that the inſtant Mr. Bourne came on ſhip-board, he bred diſſenſions.

had obtained leave of Sir James Wallace, contrary to the general order, that all officers ſhould come on board that night, you obtained leave to ſtay at Madeira that evening. How was Sir James Wallace's civility returned? You, and Lieutenant Markett, that has made an affidavit in your favor, behaved exceeding ill at the theatre, by refuſing to pull off your hats that evening, in the preſence of the Governor*.

Mr. Bourne. My lord, I deny that.

Mr. Juſtice Willes. Your conduct drew upon you, reſentment at that place.—In fact, you diſgraced your nation—You never returned to your ſhip till three days following—After three days abſence, though your licenſe was only to have ſtayed that night.

It does not appear Sir James Wallace would have taken notice of your diſorderly behaviour, if it it had not been for your ironical note, from yourſelf and Lieutenant Markett, in which you thank him, Sir James Wallace, for your polite introduction to the Governor of Madeira, you acknowledge the great civility of treatment you received from the inhabitants, which treatment, your own ill conduct drew upon yourſelf.

When Sir James Wallace underſtood you was come on board, he ſent for you into his cabin, and gave you a ſlight reprimand, in the preſence of your Major, Varlo, and Lieutenant Spry, and you made no apology for your improper conduct, nor ſeemed ſenſible of any fault.

You complain that he never aſked you to eat, or dine at his table again, I believe very few officers would have acted otherwiſe than he did†.

Then

* See the affidavits of Lieutenant Markett, Monke, &c. denying this fact.

† Where did Mr. Bourne make this complaint? Has it appeared on the face of the affidavits? No. Did even the counſel of Sir James Wallace aſ-

ſert

Then upon the ſubject of the letter, Major Varlo expreſſed his ſurprize, and ſaid, he could not conſider it in any other light than as an intended inſult.

Theſe are the ſentiments of your commanding officer upon the ſubject, and you were the more blameable for inducing Mr. Markett to join with you in the inſult offered to the captain of the ſhip*.

Your diſobedience of orders, and violent inſult of your commanding officer, in his department as captain of the ſhip, had entirely drawn upon you the reſentment of Sir James Wallace, and as this happened before the Warrior left Madeira, I don't wonder, afterwards, Sir James Wallace ſhould be particularly attentive to your conduct.

In your voyage from Madeira to Jamaica, upon the 24th of April, between ten and eleven at night, a great noiſe and diſturbance was heard in the ward-room, and a meſſage ſent up by you, to Sir James, to know if he had ordered the lights to be put out, which he had not, and he ſent Mr. Spry, the firſt lieutenant, to enquire into it, who reported you had made a diſturbance, which prevented lieutenant Stephenſon from ſleeping, who was to be upon the next watch, and that you had challenged him, upon which Sir James Wallace ſent for you to his cabin, and, in the preſence of Major Varlo, told you, you was a troubleſome man.

It was a ſentiment he might naturally entertain, and Major Varlo don't ſeem to diſapprove of

ſert it? No. Where then did this complaint originate? Or, who could communicate it to the learned judge?

* See Note on Mr. Sylveſter's argument.

of it, he only ſays you went out of the cabin, muttering ſomething to yourſelf.

In this buſineſs of ordering the candles in the ward-room to be put out, Sir James Wallace was totally unconcerned, and as to what you ſwear in your affidavit, that Lieutenant Stephenſon came from Sir James Wallace's cabin to the ward-room, ſeemingly intoxicated with liquor; it is contradicted by Mr. Spry, Sir James Wallace, and others.

If this, happening at a late hour in the evening, and a diſturbance happening on board the ſhip, is to be an excuſe for that inveterate malignity which rancored in your breaſt ever ſince, I know not how the commander of a ſhip can with ſafety do his duty*.

What was this followed with? Upon the 2 th April, when you were prohibited from walking on the ſame ſide of the deck with Sir James Wallace, the facts are differently related in the affidavits—After your behaviour on the preceding evening, you came up to Sir James Wallace, with an aſſuming air and geſture, and paſſed him in a manner which intended to convey an inſult to him.

The captain of a ſhip muſt ſupport his own dignity, and your aſſuming air and particular geſture, were not leſs contemptuous than words; but if the account given by yourſelf and Lieutenant Monke, of the behaviour of Sir James Wallace upon deck, are to be credited, Sir James Wallace's conduct was not entirely free from reprobation; but that is contradicted by Major Var-

* If the learned judge means to imply, that the duty of a commander of a ſhip, conſiſts in offering perſonal inſults to a gentleman, Mr. Bourne agrees with him, that there may be conſiderable danger in the performance of it.

lo, who, notwithſtanding your ſaying you had been ill-uſed, and muſt conſider yourſelf as a priſoner, does not interfere in your complaint or affair, or take you under protection, as he would have done, if he thought you had been ill-uſed.

If little petty ſquabbles between officers engaged in the ſervice of their country, are not ſufficient apologies or excuſes for themſelves, but that kind of rancour, hatred, and malice, muſt continue with which you ſought the life of Sir James Wallace, I muſt repeat again and again, if a conduct of that ſort from an inferior to a ſuperior, was to be excuſed, and not ſeverely puniſhed—the ſervice of this country could not be carried on, as a commander in chief would be in more danger from his own officers than from the enemy.

Now I come to the repeated injuries you have done to Sir James Wallace, to obtain ſatisfaction for theſe ſuppoſed affronts—in truth, I cannot conceive how they can be conſidered as extenuations of your crime—they appear to me as aggravations.

Your firſt accoſting Sir James Wallace at Jamaica, upon the firſt of May, 1782, I conſider as no challenge, but an opportunity you gave Sir James Wallace of explaining himſelf.

Your ſecond application in the evening of the 20th of July, was a very equivocal buſineſs—You would wiſh, it ſeems, to have both thoſe interviews conſidered as challenges.*

Admitting

* This is a very different idea from that which Sir James Wallace wiſhed the public to entertain of him from his letter of the 28th of December in the Morning Herald.

Admitting they were ſo, Sir James Wallace, as a good officer, was not in honour bound to accept them, as he was in actual ſervice—his duty to his ſovereign ſuperſeded every other obligation, and his life, in which the public were intereſted, during the heat of the war, was not to be ſacrificed to any private reſentment. *

I take this to be univerſal military law, in which there was no danger of falling into diſgrace with his corps, if this was the conduct of the inferior to his ſuperior, to whom was entruſted the care of one of his Majeſty's ſhips of war, which was then engaged in the ſervice.

At Bath no challenge was ſent to Sir James Wallace—no gentleman waited upon him to intimate your intentions of coming there, and what was Mr. Abbott's opinion upon the letter being ſhewn him, which came from you?—That Sir James ought not to anſwer it.

Upon your return to town you would have us underſtand the Earl of Cork waited upon Sir J. Wallace to know his determination, but that he could not ſee him, and, as you ſay in your libel you ſuppoſe he was cloſeted, preparing a complaint againſt you to the Admiralty.

All this is denied by my Lord Cork, who has ſaid you made an apology to him for this falſe aſſertion.

Mr. Bourne. It is falſe, my lord, I never made Lord Cork an apology.

What

* In the courſe of the trial, an officer declared an opinion in favour of Mr. Bourne, and Lord Mansfield ſaid it is offering an inſult to the court, and that the court never took opinions; a little after the carpenter and ſchoolmaſter bolted in their opinions, which was, that if Sir James Wallace had brought Mr. Bourne to a court martial, he would have been broke; yet Mr. Abbott's opinion is treated with deference by the bench, becauſe it is in favour of Sir James Wallace's retreat.

What followed after?—It was the cataſtrophe of the 6th of February, for which you are now to receive the judgment of this court—And now I am come to that ground upon which I mean to examine your conduct as a man of honor.

There are ſome eſtabliſhed rules in this imaginary court of honor, though no certain code which can be depended upon, therefore the diſcuſſion of this ſubject will not at all interfere in the judgment of the court, which was obviouſly intended to remove from the minds of the public the prejudice endeavoured to be fixed by your counſel—let it be underſtood that what has been advanced upon this head is not intended as a vindication of Sir James Wallace's courage, which has never yet been doubted in public or private life. A man of age and experience, and of acknowledged courage ought not in raſhneſs to yield to the preſumptuous intemperance of a young man, to provoke him to the field to the hazard of a life ſo valuable to the public.

Your attack at Port Royal was made in a very abrupt manner, when, inſtead of communicating your intentions to him by a friend, or letter, you ruſhed out of a negroe hut to offer an inſult to your ſuperior.*

But what was your conduct at Bath to him, what was the meſſage ſent by the waiter of the White Hart? That was to draw your adverſary to a private room, where you yourſelf were armed—No option given as to time, place, or weapon; all thoſe punctilios were omitted, though your

* See affidavit of Meſſrs. Wier, Peacock, &c. contradicting this.

your journey to Bath was premeditated.* All this rude behaviour is followed by two abuſive notes, and a kind of intimation or invitation the next morning to Captain Webber, to come and ſee you cane Sir James Wallace—You in Milſom ſtreet ſay you ſhook your cane over Sir James Wallace—I do not believe it,† but if I give you credit for the ſhaking the cane over his head, it ought to be in aggravation; but you ſay your converſation with Mr. Abbott, and Sir James Wallace's appeal to the public, excited you to freſh acts of violence.

I reprobate and greatly condemn Sir James Wallace's publication in the Morning Herald of the 20th of December, it was highly improper.

He was provoked to it by a paragraph in the paper, which he had reaſon to think was your's, as you had in a letter to him threatened to expoſe him in the public prints, but you have now upon your oath denied that.

This brings me to the laſt ſcene, which ended in the ſame rough and ungentleman-like manner in which it began.

After this affair ended from the 23d December to the 6th of February, as you had time for conſideration how to act with propriety, if you thought ſhaking your cane over Sir James Wallace's head at Bath not ſufficient for a man whoſe

* I muſt here beg to refer the readers to my Affidavit

† Notwithſtanding it appears by the affidavits that I actually did ſhake my ſtick over Sir James Wallace in Milſom-ſtreet; yet the learned judge is pleaſed to declare he will not believe it; nor does his lordſhip ſeem to have a better opinion of the veracity of Mr. Lawe, one of Sir James Wallace's council, who pleads my having done ſo, as a juſtification of his clients cocking his piſtol and preſenting it to my breaſt.

whoſe conduct was to be examined by the ſtrict rules of honor, you might have flung your hat in his face, or have given him a touch with your ſtick, inſtead of which you in an ungentleman-like manner ſtruck him in the cruel way I before deſcribed, and after this have been raſh enough at the end of the affidavit, to ſwear you was not induced to ſtrike Sir James Wallace, either thro' malice or ill will, only in defence of your reputation, and you then conclude in theſe wrong words, ſaying it was not your intention to do him the leaſt bodily miſchief.

Therefore, the court, in conſideration of your whole conduct, and as an example to deter others from being guilty of the ſame acts of violence, malice, and vindictiveneſs, and to diſcharge, as far as in our power, thoſe falſe notions of honor which have led you to the commiſſion of enormities, do pronounce upon you this

SENTENCE.

THAT you, CHARLES BOURNE, be impriſoned in the cuſtody of the Marſhal of this court for two years, and that you give ſecurity for your good behaviour for the ſpace of ſeven years, yourſelf in the ſum of 1000l. and two ſureties in 500l. each; and that you continue in the cuſtody of the Marſhal until you have given that ſecurity.

As to the publication of the libel upon the 23d of December, though it contains the groſſeſt ſcandal—ſuch as calling Sir James Wallace ſcoundrel, coward, liar, and other opprobrious names, yet, as it is only an anſwer to a prior publication

publication of Sir James Wallace, in his injudicious appeal to the public, where he ſpeaks of your vain boaſtings and falſe aſſertions.—

The mild judgment of this court is, you pay a fine of fifty pounds to our ſovereign lord the king, and that you be farther impriſoned till your fine is paid.

Mr. BOURNE, to the Counſel of Sir James Wallace.

Is this the boaſted, the diſcriminating law you have deſired me to reverence? If ſo, I thank heaven I am of an uncomplying ſpirit.

To the Court:

My lords, while I bow to the judgment of the court, I muſt declare that the conſcious rectitude of conduct I feel, and which has been ſo honorably atteſted by my brother officers, men of every rank, and of the moſt liberal diſcernment, will, I truſt, enable me to bear the ſeverity of your decree.

Copy of the anonymous Paragraph which appeared in the Morning Herald previous to the letter publiſhed by Sir James Wallace. See Mr. Barr's affidavit in Appendix.

A certain naval character, who has made more than one hazardous EXPERIMENT during the war, is ſaid to be at this time ſo awkwardly ſituated in conſequence of a perſonal difference with a brother officer, that he ceaſes to be the NONSUCH of valor he was once taken to be. It has indeed been obſerved, that he gave up the WARRIOR ſome time ſince, but his greateſt enemies will hardly think ſo meanly of him, as to conceive he means to fly to the other EXTREME, and be terrified at a country from whoſe Bourne no traveller returns.

RESO-

The affidavit of *James Hamilton* Eſq. captain and late adjutant of the Portſmouth diviſion of his Majeſty's marine forces, ſtates, that at a meeting of the officers of the ſaid diviſion, "to enquire into the conduct of Lieutenant Charles Bourne, reſpecting a diſpute which he has for ſome time been engaged in with Sir James Wallace, and which had been much the ſubject of public converſation," in conſequence of what was at that meeting related by Captains Webber and Hamilton, as well as what had appeared in the public prints, under the ſignatures of Sir James Wallace and Lieutenant Bourne, together with a public tranſaction, for which Lieutenant Bourne is now under proſecution by Sir James Wallace, the officers thought proper to agree to the following reſolutions, viz.

"That it is the opinion of the officers of the Portſmouth diviſion of marines, that Lieutenant Bourne, conceiving himſelf to have been groſsly ill-treated by Sir James Wallace, on board the Warrior, was higly juſtified in attempting to procure from Sir James Wallace an explanation of his conduct towards him.—It is likewiſe the opinion of the ſaid officers, that Lieutenant Bourne, in attempting to obtain a meeting with Sir James Wallace, for the purpoſe of an explanation, conducted himſelf with ſpirit and with propriety.—The ſaid officers are further of opinion, that it would be highly improper for a gentleman, honoured with a commiſſion in his Majeſty's ſervice, to accept of a challenge from an officer, who having been publickly caned and ſtigmatized with epithets, the moſt ſevere and diſgraceful, thought proper to ſeek for his redreſs

dress in a court of law, though the person who had so treated him, was an officer of established good character, and as such, respected by his corps; it is therefore the opinion of the officers of the Portsmouth division of marines, that Lieutenant Bourne be acquainted, that they think his accepting a challenge from Sir James Wallace, should Sir James Wallace think proper to send him one, will be a degradation of his rank and character as an officer and a gentleman.

Signed by the officers at the mess-room, May 5, 1783.

George James Prosser, lieutenant and adjutant of the Plymouth division of his Majesty's marine forces, maketh oath, that having received a letter from Captain Hamilton, adjutant of the marines at Portsmouth, inclosing the resolutions of the officers of that division, assembled to enquire into the conduct of Lieutenant Charles Bourne, in respect to a dispute between him and Sir James Wallace knight, and desiring that the same might be laid before the officers of the Plymouth division of marines for their opinion; he this deponent did accordingly lay the said resolutions before a general meeting of the officers assembled for that purpose; when the officers present, being perfectly satisfied with Mr. Bourne's conduct, on that occasion, as well as every other, thought proper to agree to the same resolutions, of which the following is a copy, viz.

[*The resolutions are the same as those of Portsmouth.*]

The affidavit of Captain *Berkeley*, adjutant of the Chatham division of his Majesty's marine forces, saith, that he laid a copy of the resolutions of the officers of the Portsmouth division, as

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tranſmitted to him by Captain Hamilton, before the officers of the Chatham diviſion, aſſembled at that place, for the purpoſe of enquiring into the conduct of Lieut. Ch. Bourne towards Sir James Wallace, and conſidering the propriety of the ſaid reſolutions of the officers of the Portſmouth diviſion, when this deponent was ordered to declare to Captain Hamilton and Lieutenant Bourne, the entire approbation of the ſaid officers to the two firſt articles of the ſaid reſolutions, but that they were of opinion, the aſſenting to the third article, would be wounding the feelings of Lieutenant Bourne, whoſe whole conduct had been ſuch, as not to leave them the ſmalleſt room to doubt of his continuing to act with propriety.

APPENDIX

Lord Mansfield has thought proper to adopt the opinion of one of the counſel of Sir James Wallace, to cenſure a body of gentlemen, for a conduct of which he could not poſſibly be a judge, for as the reſolutions were not read in court, conſequently the court was incompetent to judge of their merits. Mr. Bourne laments the circumſtance of that incompetency, for, had the reſolutions been produced, he is ſatisfied his lordſhip's diſcernment and liberality would have prevented any indelicate expreſſions. It has been ſaid by the counſel and court, that only one ſide of the queſtion had been enquired into, becauſe Sir James Wallace was not preſent at the meeting; neither was Mr. Bourne, nor had he any other advocates than thoſe who were made ſo by the goodneſs of his cauſe, and the knowledge of his conduct, while Major Varlo, the friend, and for many years intimate companion of Sir James Wallace, was preſent, and his ſubſequent conduct fully evinces how far his attachment was capable of leading him. The firſt reſolution did not admit of a diſpute, becauſe no perſon could doubt the right of a gentleman, who felt himſelf aggrieved, to demand an explanation from the perſon who had aggrieved him. The queſtion next to be conſidered was, not whether Sir James or Mr. Bourne, had originally been in fault, that being a matter the meeting did not mean to enquire into, but whether Mr. Bourne, conceiving himſelf to have been ill-treated, had, in demanding an explanation, conducted himſelf with propriety; when the teſtimony of gentlemen of the ſtricteſt character, whoſe immediate knowledge of parties and facts, enabled them to ſpeak to the particulars of the buſineſs, and who evidently could be no otherwiſe intereſted, than as they imagined it to be the cauſe of juſtice, induced the meeting to agree to the ſecond reſolution. And as to the laſt point that was to be determined on, there could not be any ſide or party to be examined. The public prints had announced the caning of Sir James Wallace. That diſgracing circumſtance ſtood uncontroverted to the world, nor was there a ſingle perſon who would ſay, that caning did not bring ignominy on the man who tamely ſuffered under it. A military man has ever been deemed the guardian of his own honor, and until honor ceaſes to hold a place amongſt the military, the officer who ſubmits to the degradation of a blow, from another officer, muſt *be looked on as beneath* the level of a gentleman, and not only juſtify, but *enforce the neceſſity of* ſuch reſolution.

APPENDIX.

AFFIDAVIT. No. I.

CHARLES BOURNE, firſt lieutenant in the Portſmouth diviſion of his Majeſty's marine forces, the defendant above-mentioned, maketh oath, that his firſt perſonal knowledge of Sir James Wallace, was about the month of Auguſt, 1781, when this deponent was at Whitehall, under chirurgical care for the cure of a wound he received on ſervice in America; that Sir James Wallace, together with a particular friend of this deponent, entered the apartments in which deponent then was, that the ſaid Sir James Wallace's face was bloody, and his cloaths torn, and that he, and the friend of this deponent, bore evident marks of having had a violent encounter; that upon attempting to interfere to prevent further miſchief, the ſaid Sir James Wallace flew at deponent, and ſeizing him by the breaſt, demanded to know if he would fight, and take the quarrel upon himſelf, but this defendant then being in a very weak ſtate of body, with his arm in a ſling, and this deponent having as little inclination as ability for an affray, declined it. And this deponent further ſaith, that the next morning, Mr. Sleigh (whom this deponent underſtands to be brother-in-law to the ſaid Sir James Wallace) waited on this deponent, and ſeemed much diſtreſſed about the conſequences that might attend Sir James Wallace's meeting with a gentleman, with whom he had the quarrel aforeſaid, and intreated this deponent to interfere, as he had before done, to prevent it. And this deponent ſaith, that being pleaſed with this further opportunity of interfering in like manner, to prevent any further difference between the parties, he, this deponent, accordingly applied to his friend, and urged every argument in his power to prevent

ſuch conſequences, and with very great difficulty prevailed on him to reſt contented with what he had done. And this deponent further ſaith, that a few months afterwards, he thought himſelf ſufficiently recovered to embark again on ſervice and join his diviſion at Portſmouth, when his Majeſty's ſhip, the Warrior, commanded by the ſaid Sir James Wallace, demanded a detachment of marines, and this deponent was ordered on board her. And this deponent ſaith, that being anxious to get clear of a man, whoſe conduct had not impreſſed this deponent with any favourable ſentiments towards him, he, this deponent, endeavoured to avail himſelf of the privilege frequently given to officers, of changing duty or ſhips with each other, but this deponent ſaith, that though there were ſeveral officers at quarters, who wiſhed to go to ſea, yet he could not prevail on any one officer to exchange with him. And this deponent ſaith, that during the voyage of the ſhip Warrior, from England to Jamaica, he experienced from the ſaid Sir James Wallace ſeveral inſtances of inſult, outrage, and unofficerlike behaviour, particularly on obſerving this deponent walking on the quarter-deck, he, the ſaid Sir James Wallace, would frequently come out of his cabin, with his fiſts clinched in a moſt menacing and provoking manner, driving this deponent from ſide to ſide of the ſaid ſhip, with an intention, as this deponent firmly believes, to irritate him to ſome act or expreſſion, for which he might be brought to a court-martial, which deponent being aware of, ſuppreſſed his natural reſentment, and treated the ſaid Sir James Wallace with every reſpect that is due to a commanding officer. And this deponent further ſaith, that ſome time before the ſaid ſhip, Warrior's, arrival at Jamaica, Mr. Stephenſon, one of the lieutenants of the ſhip, came, ſeemingly intoxicated with liquor, from Sir James Wallace's cabin, into the ward-room, and behaved with great rudeneſs and impropriety to the company, but moſt particularly to this deponent, which deponent verily believes was at the inſtance of the ſaid Sir James Wallace,

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the ſaid Mr. Stephenſon then blowing out the candles, ordered the ſervants, in an official manner, not to light them again. And this deponent further ſaith, that the gentlemen of the ward-room, finding themſelves in the dark, and likely to remain ſo, unleſs redreſſed by ſuperior power, ſent their reſpectful compliments to Sir James Wallace, begged to inform him, that the candles were blown out by Mr. Stephenſon, and not ſuffered to be re-lighted, and that if it was not Sir James's wiſh or deſire they ſhould be ſo, requeſting he would order them to be lighted again. And this deponent further ſaith, that immediately after the ſaid meſſage was ſent him, the ſaid Sir James Wallace ſent for this deponent into his cabin, where he was ſitting with the captain of marines, maſter, and ſurgeon, and upon this deponent entering his cabin, Sir James Wallace advanced towards this deponent, and with his fiſt clinched, demanded of this deponent, what meſſage was that was ſent him; and this deponent ſaith, that he bowed, and repeated the meſſage that was ſent by the gentlemen of the ward-room, viz. their reſpectful compliments, &c. And this deponent ſaith, that Sir James Wallace deſired this deponent to get away, that he would ſay nothing to him at that time, but that he would take an opportunity, that this deponent ſhould hear from him; this deponent then replied, that he ſhould be happy in the honor at any time, to hear what he had to ſay, and retired. And this deponent ſaith, that the next morning Lieutenant Stephenſon, repenting of his miſconduct, requeſted that the gentlemen of the ward-room would attend, while he declared his concern for the whole of his behaviour, and particularly that part of it which related to this deponent, declaring that he was drunk, that he was ſorry for what had happened, and intreated this deponent's pardon and forgiveneſs. And this deponent further ſaith, that on the 24th day of April, 1782, the ſaid Sir James Wallace, ſeeing this deponent on the quarter-deck, came running out of his cabin in a violent manner, with his fiſts clinched to this deponent's face, muttering the word ſcoundrel, but this deponent really think-

ing the ſaid Sir James Wallace, at that inſtant, in a ſtate of madneſs, turned away his head and went to the other ſide of the deck, and walked with Lieutenant Monk, the officer of the watch, the ſaid Sir James Wallace then walked backwards and forwards in the moſt violent rage, and then went into his cabin, and ſhortly returning, called loudly to Lieutenant Spry to attend to his public orders, which were, *That they who ever treated him with diſreſpect*, ſhould never walk on the ſame ſide the quarter-deck with him, and therefore, Mr. Bourne, addreſſing himſelf to this deponent, *you muſt ever walk on the oppoſite ſide*, or words to that effect, upon which this deponent ſaid, he was confident he did not come within that deſcription, and that his conduct to Sir James Wallace had ever been the reverſe. Whereupon the ſaid Sir James Wallace, in an inſulting manner, aſked this deponent if he dared to diſpute his orders, to which this deponent replied "certainly not," that he was too old a ſoldier to diſpute an order, but that if he perſevered in it, he, this deponent, muſt conſider himſelf a priſoner, for that under ſuch unprecedented inſtances of reſtriction, public inſult, and diſgrace, he could not do his duty as an officer, and requeſted the ſaid Sir James Wallace, that if any part of his conduct was exceptionable, he would confine him in the regular manner, that he might have an opportunity of clearing himſelf inſtead; of which the ſaid Sir James Wallace peremptorily charged this deponent to attend to his order. And this deponent further ſaith, that for two or three weeks after, during the time they were at ſea, and even when they arrived at Port Royal, the ſaid Sir James Wallace did not revoke the ſaid order; that deponent, upon the ſhip's arrival there, wrote a letter to the naval commander in chief, the tenor of which was ſunk in Le Hector, but as near as this deponent can recollect it was to the following purport, viz. complaining of the aforeſaid order, and ſoliciting the admiral's protection, and requeſting him to grant an enquiry into deponent's conduct, how far he had treated the ſaid Sir James Wallace with any diſreſpect, and into his authority for treating deponent in ſuch an unofficerlike and ungentlemanlike

manlike a manner, and alſo requeſting that the admiral would order a court-martial on Sir James Wallace for public inſult and oppreſſion, and a breach of the fifth article of the printed inſtructions, in attempting to puniſh deponent. And deponent further ſaith, that inſtead of complying with this deponent's requeſt, the commander in chief, about nine or ten days afterwards, ſent an order to diſcharge this deponent from the Warrior, into Le Hector, a French prize. And this deponent further ſaith, that ſome ſhort time afterwards, this deponent accidentally meeting the ſaid Sir James Wallace on ſhore, at Port Royal aforeſaid, in company with Major Varlow, of the marines, he, this deponent, gave Sir James Wallace an opportunity of explaining himſelf, which he declined, and walked quickly away from deponent to his boat. And this deponent further ſaith, about a month or ſix weeks afterwards, this deponent again met the ſaid Sir James Wallace on ſhore, at Port Royal aforeſaid, in company with a captain of the navy, and this deponent again offered himſelf to the ſaid Sir James Wallace, who declined coming to an eccliarciſſement, but promiſed deponent that he, the ſaid Sir James Wallace, would do his duty, and that deponent ſhould hear from him. And this deponent further ſaith, that notwithſtanding the ſaid promiſe, he never heard from the ſaid Sir James Wallace, though the ſaid Sir James Wallace, and this deponent, remained on the ſaid Iſland for ſome weeks afterwards; but inſtead of any apology, was informed by ſeveral officers, that the ſaid Sir James Wallace continued to treat deponent's name and character with abuſe and diſreſpect. And this deponent further ſaith, that on his arrival in Plymouth from Newfoundland, he thought it a duty indiſpenſible to his character, as an officer and a gentleman, to come up to London, to obtain an explanation from the ſaid Sir James Wallace, for ſuch groſs and injurious conduct, and having before been upon terms of intimacy and friendſhip with the Earl of Cork, he, this deponent, waited on his lordſhip, and acquainted him with the various circumſtances of the ill-treatment he had met with from the ſaid Sir James Wallace. And this deponent further ſaith, that the ſaid Earl of Cork,

Cork, with readineſs and kindneſs, offered to accompany this deponent, as his friend, to Bath, where the ſaid Sir James Wallace was ſaid to be at that time, which this deponent declined, having heard that Captain Webber, a gentleman for whom this deponent had the higheſt reſpect and eſteem, was then at Bath. And this deponent further ſaith, that upon his arrival at Bath aforeſaid, he waited on the ſaid captain Webber, and made him fully acquainted with the purport of his viſit to that city; the great confidence which this deponent had in captain Webber's good ſenſe and conduct, being deponent's ſtrongeſt motive for his application to that gentleman for advice, this deponent having reſolved to act in the whole of this buſineſs with the ſtricteſt propriety. And deponent further ſaith, that he in vain endeavoured to obtain an interview; he at length met the ſaid Sir James Wallace in a ſtreet, at Bath aforeſaid, and upon demanding ſuch conceſſions as he conceived his character required, the ſaid Sir James Wallace preſented a piſtol, cocked at deponent's breaſt, declaring he would ſhoot him. And deponent further ſaith, that he expreſſed his warmeſt reſentment and ſurprize at ſuch conduct in the open ſtreet, and urged a more private meeting, which the ſaid Sir James Wallace abſolutely refuſed. And deponent ſaith, that he was informed and believes, that the next morning the ſaid Sir James Wallace left Bath. And deponent further ſaith, that in the evening of that day, a gentleman of the name of Abbot, accompanied by another gentleman, called upon deponent, and declared, that if he had ſent a written challenge, Sir James Wallace would have met him; to which deponent anſwered, that from the opinion he entertained of Sir James, he would not venture to give him poſſeſſion of a paper ſo offenſive to the laws of the country; to which the ſaid Mr. Abbot only replied, by obſerving, that Sir James Wallace would ſtill come to an explanation, provided deponent would ſend a gentleman to him upon the buſineſs. And deponent ſaith, that upon hearing the latter declaration, he reſolved upon his arrival in town, to call upon the Earl of Cork, acquaint him with the whole of the affair, and requeſt that his lordſhip would call upon the

ſaid

ſaid Sir James Wallace on the ſubject. Deponent further ſaith, that before the laſt declaration of Mr. Abbot aforeſaid, he, this deponent, conceiving that he had aſked ſufficiently in the affair to vindicate his honour, determined to take no other ſtep whatſoever, but in conſequence of what Mr. Abbot ſaid, he, this deponent, ſaith, that on his arrival in London, he waited upon the ſaid Earl of Cork, for the aforeſaid purpoſe, and that with the greateſt readineſs, and ſeeming kindneſs, he, the ſaid Earl of Cork, agreed to call upon the ſaid Sir James Wallace accordingly. And deponent further ſaith, that the ſaid Earl of Cork afterwards informed this deponent, that he could not ſee the ſaid Sir James Wallace, but had ſeveral times converſed with Mr. Sleigh, Sir James's relation and ſolicitor. And deponent ſaith, that he afterwards waited on the ſaid Earl of Cork, in company with captains Deſborough and Hamilton; the ſaid Earl of Cork declared that he had again called at Sir James Wallace's, but could not obtain an interview with him, but that he had ſeen Mr. Sleigh, who informed him, the ſaid Earl of Cork, that Sir James Wallace had written a letter of complaint againſt this deponent to the lords of the admiralty, and which, his lordſhip thought, argued no great ſign of his intentions to meet this deponent, or he uſed words to that purport or effect. And this deponent further ſaith, that after this converſation with the Earl of Cork, the deponent ſaw in the Morning Herald, the following letter, ſigned by Sir James Wallace.

December 20th 1782.

For the MORNING HERALD.

Mr. Editor,

UPON my arrival in town yeſterday, I was informed a publication had appeared in your paper caſting very pointed, ſcandalous aſperſions on my character, of which, from ſome late tranſactions, I ſuppoſe Lieutenant Bourne of the marines to be the author; the whole of Bourne's ungentleman-like behaviour, which I have laid before the Admiralty, is too long for a newſpaper publication. I

ſhall

ſhall therefore only ſay, that he has never once come to the point, either at Jamaica, Bath, or London, and if he had, I can demonſtrate that I was prepared for him at each place, and might have prevented all his vain boaſtings and falſe aſſertions.

Dec. 1782. JA. WALLACE.

And this deponent moſt poſitively ſwears, that he *neither wrote nor publiſhed, nor cauſed to be written or publiſhed, the article which appeared in the Morning Herald, to which the ſaid* Sir James Wallace alludes in the aforeſaid letter, neither did he then, nor does he, this deponent, yet *know any thing whatever of the author or publiſher of the ſame.* And this deponent further ſaith, that by the advice of all his friends whom he conſulted upon the occaſion, and according to the dictates of his own ſenſe of honor and character, he thought it his indiſpenſible duty to publiſh the letter which appeared in the ſaid Morning Herald of the 22d of December, under this deponent's proper ſignature, for which deponent is to receive the judgment of this honourable court. And this deponent further moſt poſitively and ſolemnly ſaith, that he was not induced to publiſh the ſaid letter in the Morning Herald aforeſaid, by any malice towards the ſaid Sir James Wallace, nor has this deponent, either in his prior or ſubſequent conduct, in this buſineſs, been actuated by any other motive than the vindication of his own honor and reputation, as a gentleman and an officer. And, laſtly, this deponent ſaith, that having loſt almoſt every thing he was poſſeſſed of by the loſs of Le Hector, he, this deponent, in order to enable him to bear the expences of the two proſecutions which are commenced againſt him by Sir James Wallace, has been obliged to grant an annuity upon a penſion this deponent receives from government, for wounds received in ſervice, and that nothing but the defence of his reputation could induce him to part with.

AFFIDAVIT

AFFIDAVIT of Lieut. MONKE. No. II.

GEORGE PARIS MONKE, late fourth Lieutenant of his majeſty's ſhip Warrior, commanded by Sir James Wallace, maketh oath and ſaith, that ſome time about the latter end of April, 1782, this deponent was walking on the quarter-deck of the ſaid ſhip Warrior, with the above defendant, Lieut. Charles Bourne, when the ſaid Sir James Wallace, ſeeing the ſaid defendant upon the quarter-deck, came running out upon him from his cabin in a very violent manner, with his fiſts clenched to his face, his brows knit, and his eyes, as it were, darting fire, in ſhort, betraying every ſymptom of inſanity. And that he, the ſaid Sir James Wallace, then gave out in public orders to Mr. Spry, the firſt Lieutenant, That no perſon who had treated him with diſreſpect ſhould walk on the ſame ſide of the quarter-deck with him; at the ſame time turning to the ſaid Charles Bourne, in a very uncivil manner addreſſed himſelf to him nearly in the following words, "Therefore Mr. Bourne you muſt ever walk on the oppoſite ſide." And this defendant further ſaith, that he hath ſeveral times ſeen the ſaid Sir James Wallace treat the ſaid Charles Bourne (in this deponent's opinion and judgment) in a moſt unofficer-like, infamous, and inſulting manner, with a view, as this deponent ever conceived, to irritate the ſaid Charles Bourne to commit ſome act of violence againſt him, in order to take the advantage of trying him by a court-martial, to ſatisfy his implacable and unjuſt reſentment; and this deponent further ſaith, that he is alſo of opinion, that no officer under the circumſtance of ſuch public diſgrace and inſult could with any degree of propriety or honor do his duty. And this deponent further ſaith, that he hath ſtrictly obſerved the conduct of the ſaid Charles Bourne, while ſerving on board the Warrior, and always found it to be that of a gentleman, a ſober, diligent, and gallant officer, and a man of honor not in the leaſt inclined to be quarrelſome or diſreſpectful either to Sir James Wallace or any of the officers; on the contrary, this deponent ſaith, that the conduct of

Sir James Wallace towards the ſaid Charles Bourne was in general in the higheſt degree tyrannical and oppreſſive, and ſuch as this deponent verily believes none but a man out of his ſenſes, or intoxicated with liquor, could have been guilty of. And this deponent further ſaith, that ſoon after the Warrior arrived at Port Royal, Jamaica, this deponent as commanding officer (in the abſence of the ſaid Sir James Wallace, and the firſt, ſecond, and third Lieutenants, received a letter addreſſed to Sir James Wallace on his majeſty's ſervice, from Admiral Sir Geo. B. Rodney, incloſing one from the ſaid Lieutenant Bourne, repreſenting the order of the ſaid Sir James Wallace above alluded to, that he ſhould not walk on the ſame ſide of the quarter-deck with him, and requeſting under ſuch circumſtances of public inſult and diſgrace, the ſaid Sir George Rodney would pleaſe to grant an inquiry into his, the ſaid Charles Bourne's conduct, how far he had treated Sir James Wallace with diſreſpect, and alſo requeſting that he would order a court-martial on Sir James Wallace for public inſult and oppreſſion, and a breach of the twelfth and thirteenth articles of the printed inſtructions, in order to free him, the ſaid Charles Bourne, from his diſgraceful ſituation, which letter and incloſure this deponent delivered to the ſaid Sir James Wallace on his coming on board.

AFFIDAVIT of AUGUSTUS MARKETT, late third Lieut. of the Warrior. No. III.

AUGUSTUS MARKETT, late third Lieutenant of his majeſty's ſhip Warrior, maketh oath, that his firſt knowledge of the ſaid Charles Bourne was in November, 1781, when he was embarked as Lieutenant of marines on board his majeſty's ſaid ſhip Warrior. And this deponent ſaith, that he was inſtantly ſtruck with the eaſy, polite, and gentlemanlike addreſs of the ſaid Charles Bourne, which pointed him out to this deponent as a very eligible and deſirable acquaintance, and led this deponent to watch moſt attentively over thoſe parts of his conduct that might fall under his obſervation, that if, upon the ſtricteſt ſcrutiny, this deponent ſhould find him

ſo perfectly the gentleman his appearance ſo expreſſively beſpoke him, this deponent might, by taking him as a model, and paying a minute attention to that happy manner of behaviour which ſo eminently diſtinguiſhed him, in time gain his eſteem, and then his friendſhip. And this deponent further ſaith, that in this he conceived himſelf amply rewarded, having conſtantly found in the ſaid Charles Bourne all that could be deſired in the gentleman and officer, his good breeding and amiableneſs of diſpoſition making him every one's favorite, and rendering it almoſt impoſſible for any man in his ſenſes to quarrel with him. And this deponent further ſaith, that as an officer the ſaid Charles Bourne conducted himſelf with alertneſs, aſſiduity, and the ſtricteſt attention to diſcipline, and that he was an example of ſobriety and good conduct to all under his care. And this deponent further ſaith, that he ſaw the ſaid Charles Bourne in action with the French fleet on the memorable 9th and 12th of April, when he was quartered in a part of the ſhip much expoſed to the fire of the enemy. And this deponent ſaith, that the ſaid Charles Bourne, during the confuſion of the ſaid combats, acquitted himſelf with that heroic intrepidity, that cool, reſolute, and undaunted execution of duty, which ſo effectually increaſes the ardour of the men, and renders the officer the admiration of his profeſſion. And this deponent ſaith, that he was preſent in Sir James Wallace's cabin on board the Warrior ſome time in the month of February, 1783, when the ſaid Sir James Wallace put the following queſtion to him in the preſence of ſeveral officers of the ſhip and his ſervants, viz. "Why, if you thought yourſelf aggrieved or affronted, did not you call me out." or words to that effect. And this deponent ſaith, that the ſaid Charles Bourne was careful of ſaying of any thing that a court-martial could take cognizance of, imagining the ſaid officers and people were placed there with a view to catch at any word that might be given in evidence againſt him. And this deponent further ſaith, that he verily believes the ſaid Charles Bourne to be moſt foreign to a quarrelſome diſpoſition, and as an inſtance of his pacific and good temper, this deponent ſays, he was preſent when one of the Warrior's officers, without the leaſt provocation

on the part of the ſaid Charles Bourne, treated the ſaid Charles Bourne in the moſt abuſive and inſulting manner, and that the ſaid Charles Bourne, inſtead of reſenting the ſame in a manner that moſt people would have done, waited the return of the ſaid officer's reaſon, and with the greateſt good nature accepted an apology from him in the morning.

AFFIDAVIT of Captain GREEN, of the Marines. No. IV.

CHARLES GREEN, Eſquire, captain in his majeſty's marine forces, maketh oath and ſaith, that ſome time in or about the month of July in the year 1782, he, this deponent, being then at Port-Royal in the iſland of Jamaica, and in company with Lieutenant Charles Bourne, defendant in this cauſe, the ſaid Charles Bourne communicated to this deponent ſeveral particulars of a ſeries of ill-treatment, which he declared he had received from Sir James Wallace, commander of his majeſty's ſhip the Warrior, during the voyage from Portſmouth to the iſland of Jamaica aforeſaid; that the ſaid Charles Bourne at the ſame time expreſſed a very high ſenſe of the ſaid injurious treatment, and declared with becoming warmth and energy that he was reſolved to obtain ample atonement from the ſaid Sir James Wallace for his ſaid conduct; that the ſaid Charles Bourne further declared, that the ſaid Sir James Wallace having before declined that kind of explanation which, as a gentleman and an officer, he, the ſaid Charles Bourne, had a right to demand and expect, he was determined to avail himſelf of the firſt opportunity of doing that public juſtice to his character, which the public notoriety of the caſe demanded, by obliging the ſaid Sir James Wallace to come to the point at once (or words to that effect) but that if the ſaid Sir James Wallace could not be prevailed upon to do juſtice in that way, he, the ſaid Charles Bourne, was reſolved to cane him, or chaſtiſe him in ſome manner equally ignominious, as a paltroon and coward deſerved. Deponent further ſaith, that in a few minutes after this converſation,

converſation, the ſaid Sir James Wallace, together with Captain Fiſher, of Le Caton, accidentally appeared on the other ſide of the way, near the hoſpital, and being obſerved, the ſaid Charles Bourne immediatelybroke from deponent, ſaying, that the buſineſs ſhould then be ſettled, or words to that effect, and croſſing the way, ſtopped the ſaid Sir James Wallace. Deponent further ſaith, that an altercation between the ſaid parties (the whole of which he could not diſtinctly hear) then took place; that the ſaid Charles Bourne laying his hand to his ſword, declared, in the hearing of deponent, that he expected Sir James would then ſettle the matter like a gentleman, or words to the ſame purport, but that Sir James Wallace, who was alſo armed with a ſmall ſword, ſeemed unwilling to accept the challenge, notwithſtanding the ſpirited and indignant manner in which the ſaid Charles Bourne addreſſed and treated him. Deponent further ſaith, that throughout the whole of the ſaid tranſaction, he, the ſaid Charles Bourne, in the opinion of deponent, conducted himſelf entirely as became a gentleman and an officer, whoſe honor had been injured, and whoſe feelings had been exquiſitely wounded by illiberal and diſgraceful treatment.

AFFIDAVIT of Captain WEBBER, of the Marines. No. V.

JOHN WEBBER, Eſq. Captain in his majeſty's marine forces, maketh oath, that in or about the month of December, 1782, he, this deponent, being on the recruiting ſervice at Bath, was called on by Lieutenant Charles Bourne, defendant in this cauſe, who informed deponent that he had come to Bath in order to ſee Sir James Wallace, from whom he ſaid he had received the groſſeſt inſults while under his command on board the Warrior, and declaring his intention of obliging the ſaid Sir James Wallace to come to that explanation, which as a gentleman and an officer, his feelings could not diſpenſe with, and the ſaid Lieutenant Bourne ſeeming to wiſh to act with the ſtricteſt propriety, ſolicited this deponent's advice, and alſo requeſted of this deponent to carry

carry a meſſage to the ſaid Sir James Wallace, demanding a meeting for that purpoſe. And this deponent further ſaith, that he informed the ſaid Charles Bourne, that if he would return to his inn, and ſend to Sir James Wallace from thence, he, this deponent, would accompany him as a friend, in caſe the ſaid Sir James Wallace ſhould call or ſend to him, or to that effect. Deponent further ſaith, that the ſaid Charles Bourne ſometime after returned to him, and acquainted him that he had ſent ſeveral meſſages, deſiring to ſee the ſaid Sir James Wallace, without effect; that the ſaid Charles Bourne then in the preſence of this deponent, wrote to the ſaid Sir James Wallace, to the following effect, that if he, the ſaid Sir James Wallace, perſevered in refuſing to ſee him, it would confirm in his mind the opinion which he had long entertained, that the ſaid Sir James Wallace was deſtitute of every principle of honor, and every idea of a gentleman; but the ſaid Sir James Wallace ſtill declining to ſee Mr. Bourne, that the ſaid Charles Bourne then requeſted the further advice of this deponent how to conduct himſelf further, that never having known a gentleman under ſuch circumſtances, he, this deponent, did not know how to adviſe in a caſe of ſo delicate and ſerious a nature, but recollecting that Lieutenant Colonel Heathcot was then at Bath, he determined to acquaint him with the circumſtances thereof, and to requeſt his advice, which deponent did accordingly, but that Lieutenant Colonel Heathcot declared he was as much at a loſs as this deponent could poſſibly be. And this deponent further ſaith, that finding in the conduct of the ſaid Charles Bourne, during the courſe of their ſeveral meetings and converſations upon the occaſion, ſuch a diſpoſition as he, this deponent, conceived to be ſpirited and proper, as an officer and a gentleman, the ſaid Lieutenant Colonel Heathcot and this deponent determined to leave the ſubſequent conduct of the ſaid Charles Bourne entirely to the regulation of his own judgment. And this deponent further ſaith, that upon this the ſaid Charles Bourne immediately ſaid, he thought it incumbent on him to cane the ſaid Sir James Wallace, and accordingly went to the ſeveral public places, where the ſaid Sir James Wallace

was

was ſaid to frequent, for that purpoſe, but that the ſaid Sir James Wallace was not to be met with on that day. On the morning following, the ſaid Charles Bourne in company with this deponent, waited at the pump-room from eight till ten o'clock without effect; that between twelve and one o'clock this deponent and the ſaid Charles Bourne returned to the pump-room a ſecond time, and was informed that the ſaid Sir James Wallace had juſt been there and paid for his water, and was ſetting off for London, which determined the ſaid Charles Bourne to go to the ſaid Sir James Wallace's houſe, which, on account of ladies which were ſaid to be there with him, the ſaid Charles Bourne had before that time refrained from doing; that immediately after being in company with Mr. Davis, Agent Victualler of Gibraltar, he ſaw the ſaid Sir James Wallace walking on the oppoſite ſide of the way, and at the ſame time the ſaid Charles Bourne approaching him, deponent ſays, that he was not near enough to hear any part of the converſation which paſſed thereon between the ſaid parties, but that he ſaw the ſaid Sir James Wallace inſtantly draw a piſtol from his pocket, which he preſented to the breaſt of the ſaid Charles Bourne, whoſe then geſtures ſeemed to menace and threaten the ſaid Sir James Wallace with the conſequence of his reſentment, at the ſame time ſhaking his cane or ſtick at the ſaid Sir James Wallace; that the ſaid Sir James Wallace and the ſaid Charles Bourne ſhortly after parted. And this deponent further ſaith, that upon this, as well as upon every other occaſion reſpecting the ſaid diſpute, the conduct of the ſaid Charles Bourne was, in the opinion of this deponent, ſuch as could not be diſpenſed with by any gentleman, particularly an officer, under the ſame kind of circumſtances. And deponent further ſaith, that in his opinion of the conduct of the ſaid Charles Bourne, he, the ſaid deponent, had the concurrence of the above-mentioned Colonel Heathcot, a gentleman of the ſtricteſt honor and beſt judgment.

AFFIDAVIT

AFFIDAVIT of Mr. BARR, Printer of the Paper called the MORNING HERALD. No. VI.

J. S. BARR, printer of the Morning Herald, maketh oath, that on the 20th of December laſt, the following article was brought him by Mr. Sleigh (who this deponent is informed is Sir James Wallace's Solicitor and relation) ſigned by Sir James Wallace, with directions to be inſerted in the Morning Herald of the next day, and which, upon the authority aforeſaid, was accordingly inſerted, viz.

"*Mr. Editor*,

"UPON my arrival in town yeſterday, I was informed a publication had appeared in your paper of Monday laſt, caſting very pointed, ſcandalous aſperſions on my character, of which, from ſome late tranſactions, I ſuppoſe Lieut. Bourne of the marines to be the author; the whole of Bourne's ungentleman-like behaviour, which I have laid before the Admiralty, is too long for a newſpaper publication; I ſhall therefore only ſay, that he has never once come to the point, either at Jamaica, Bath, or London, and if he had, I can demonſtrate that I was prepared for him at each place, and might have prevented all his vain boaſtings and falſe aſſertions."

Dec. 20*th*, 1782. JA. WALLACE.

And this deponent further ſaith, that for the inſertion of the abovementioned article, the ſaid Mr. Sleigh paid this deponent half a guinea.

AFFIDAVITS of LAWRENCE DESBOROUGH, and JAMES HAMILTON, Eſqrs. captains of the Portſmouth diviſion of marines. No. VII.

Make oath and ſay, and firſt this deponent, Lawrence Deſborough, for himſelf ſaith, that at the requeſt of the above defendant, Charles Bourne, he accompanied him, ſome time about the middle of December laſt, to the lodgings of the Earl of Cork, in Groſvenor-ſtreet, whom the

the ſaid Charles Bourne acquainted this deponent, had moſt generouſly intereſted himſelf in his affairs with Sir James Wallace, and had undertaken to carry a meſſage to the ſaid Sir James Wallace, demanding an immediate meeting, for the purpoſe of giving the ſaid Sir James Wallace an opportunity of making a proper apology to the ſaid Charles Bourne, or of giving him ſatisfaction in the uſual manner amongſt military men.

Saith, that at Lord Cork's houſe they were acquainted by the ſervant, that his lordſhip, after waiting ſome time for Mr. Bourne, was gone out, but had left a note for Mr. Bourne, which note was to acquaint him, that his lordſhip had not been able to effect an interview with Sir James Wallace; that he ſhould be at home at four o'clock that afternoon, and would be glad to ſee him.

Both ſay, that the next morning they, theſe deponents, accompanied the ſaid Charles Bourne to the lodgings of the ſaid Earl of Cork, and after the uſual ceremony of introducing theſe deponents to his lordſhip, the converſation immediately turned on the reſult of the ſaid meſſage, when the ſaid Earl of Cork acquainted the ſaid Charles Bourne, that he had again called at Sir James Wallace's houſe, but that he could not ſee him, as he was ſaid to be out of town, or words to that effect, but his lordſhip obſerved that he had ſeen Mr. Sleigh, who, theſe deponents are informed, is Sir James Wallace's brother-in-law and ſolicitor, who had acquainted the ſaid Earl of Cork, that Sir James Wallace had written a complaint againſt Mr. Bourne, to the lords of the admiralty; that he, the ſaid Earl of Cork, then acquainted Mr. Sleigh with the purport of his errand, that he came as Mr. Bourne's friend, and ſhould expect Sir James's anſwer. Deponents ſay, that the ſaid Earl of Cork then expreſſed his ſurprize that he had not heard from Sir James Wallace, which made his lordſhip conclude he was out of town, or waited the iſſue of his complaint to the lords of the admiralty, and which, he thought, argued no great ſign of his intention to anſwer Mr. Bourne's challenge, but that if he did, he ſhould be very happy to convince Mr. Bourne how much he was his friend. Deponents ſay, that during the whole courſe

of the converſation, the ſaid Earl of Cork expreſſed himſelf towards Mr. Bourne, ſeemingly with moſt perfect eſteem and friendſhip, and at parting, profeſt the higheſt approbation of Mr. Bourne's conduct, and making the ſtrongeſt offers of his countenance and ſupport. Deponents ſay, that they have been long upon habits of intimacy and friendſhip with the ſaid Charles Bourne, and that ſo far from finding in him a tendency to quarrels and diſputes, he has ever conducted himſelf in ſuch a manner as to make his line of conduct worthy the imitation of thoſe who value themſelves moſt upon the nicety of their feelings, and propriety of their conduct.

AFFIDAVIT of Major General COLLINS. No. VIII.

Major General Arthur Collins maketh oath, that Lieutenant Charles Bourne of the marines, was under the command of the Plymouth diviſion for a conſiderable time, where they lived together at the marine meſs, that he, this deponent, always noticed the ſaid Lieutenant Bourne to have conducted himſelf as an officer and a gentleman, in every ſenſe of the word, and never gave the leaſt ſign of a quarrelſome diſpoſition, on the contrary, he was conſtantly remarked for eaſe, good humour, and the gentility of his behaviour.

AFFIDAVIT of JAMES HAWKES, Eſq. Commander of the Iris. No. IX.

Captain James Hawkes, late commander of his Majeſty's ſhip Iris, maketh oath, that he knows Lieutenant Charles Bourne, the defendant above-named, and has known him for ſome years; that he, the ſaid defendant, ſailed under this deponent's command, in the Iris, as firſt lieutenant of marines, from the 20th day of July, 1779, to the 10th day of June, 1780, during which time, ſaid defendant behaved like a gentleman, in every reſpect, as well as an obedient good officer. And this deponent

alſo

alſo ſaith, that he never had the leaſt reaſon to be at any time diſſatisfied with his conduct or behaviour; that during the time that this defendant ſerved with this deponent, the ſaid defendant was dangerouſly wounded in an action, with a French frigate of ſuperior force, when he behaved with great gallantry and alacrity, and being very ill with the ſaid wound, was obliged to be landed at New York, and when this deponent came home, in the Renown man of war, the ſaid defendant returned with him as a paſſenger, being then very ill of his ſaid wound. And this deponent further ſaith, that during the whole of this deponent's knowledge or acquaintance with the ſaid defendant, he never knew him quarrelſome or troubleſome.

AFFIDAVIT of JOHN BOURCHIER, Commander of Le Hector. No X.

JOHN BOURCHIER, Eſq. commander of his Majeſty's ſhip Le Hector, maketh oath, that the above defendant, Charles Bourne, was ſerving on board his Majeſty's ſaid ſhip, from the month of May to the month of October 1782, when ſhe was unfortunately loſt. And this deponent ſaith, that during all the ſaid time, the ſaid Charles Bourne behaved in every reſpect, becoming the character of a gentleman and an officer, and very much to the ſatisfaction of this deponent, not in the leaſt inclined to be troubleſome or quarrelſome. And in action, and during all that unfortunate voyage, behaved with the greateſt attention and good conduct. And this deponent further ſaith, that the high opinion which he entertains of the ſaid Charles Bourne, would make him happy upon all occaſions to receive him as an officer, on board any ſhip this deponent might have the honour to command in his Majeſty's navy.

AFFIDAVIT of Lieutenant THOMAS MIDDLETON, of Le Hector. No. XI.

THOMAS MIDDLETON, late Lieutenant of his Majeſty's ſhip Le Hector, maketh oath and ſaith, that

he has been intimately acquainted upwards of a year, with Charles Bourne, the defendant in this cauſe, ſix months of which they lived together, and from the obſervations this deponent had made on the diſpoſition and character of the ſaid Charles Bourne, he verily believes him incapable of harbouring a diſhonourable or an ill natured thought as any man. And this deponent further ſaith, that on their paſſage from Jamaica, in Le Hector aforeſaid, in the month of October laſt, they had a long and deſperate battle with two French men of war, during which, as well as through a ſucceeding ſcene of ſickneſs, thirſt, and hunger, in a ſinking ſhip, a conſiderable diſtance from any land, and precluded from every proſpect of deliverance, the cool, and unabated intrepidity of the ſaid Charles Bourne, inſpired courage and hope to every perſon round him. And this deponent further ſaith, that ſo far from the ſaid C. Bourne being of a quarrelſome diſpoſition, that he hath ſeen many inſtances of his accommodating the diſputes of others, and deponent firmly believes, that there is not exiſting a more peaceable, worthy, and gallant officer.

AFFIDAVIT of BOWLES MITCHELL, firſt Lieutenant of the Iris. No. XII.

BOWLES MITCHELL, late firſt lieutenant of his Majeſty's ſhip Iris, maketh oath and ſaith, that he hath been, off and on, intimately acquainted with Lieutenant Charles Bourne, defendant in the above cauſe, theſe four years, above a year of which, he meſſed and did duty with the ſaid Charles Bourne, having unremitting opportunities of obſerving the conduct and behaviour both public and private, of this deponent, he ever found the ſaid Charles Bourne an enviable character, both for his benevolence, and pleaſant temper, and poſſeſſed of every good quality to endear him to mankind and ſociety; nor would it be but juſtice, to acknowledge the ſatisfaction he always had, as executive officer in the ſhip, in giving the defendant any directions for executing his duty, as they were always done with the greateſt care and diſpatch, and with that zeal he always ſhewed to ſervice. Having been

been in action with the defendant, where he exerted himſelf and received a deſperate wound, his uſual coolneſs and good temper ſtill remained; and deponent had, by ſerving as lieutenant in the ſhip the defendant came home in from America, an opportunity of obſerving his intrepidity and coolneſs, under the moſt excruciating pain, occaſioned by a canniſter ſhot lodging behind his ſhoulder blade, which he bore with that manly fortitude and good temper, he was always known to poſſeſs.

AFFIDAVIT of Lieutenant INMAN, of Le Hector. No. XIII.

HENRY INMAN, late lieutenant of his Majeſty's ſhip Le Hector, maketh oath and ſaith, that he has been acquainted with Charles Bourne, the above defendant, for twelve months, ſix months of which they lived together; that they ſailed from the iſland of Jamaica, about the latter end of July, 1782, on board Le Hector, aforeſaid, commanded by John Bourchier, Eſq. and that deponent further ſaith, that under all the known calamities that attended that unfortunate voyage, in the moſt trying and alarming ſituations, ſurrounded by death and carnage, in action, and ſuffering all the horrors of hunger, thirſt, ſickneſs, and apparent diſſolution, the manly ſpirit and reſolution of the ſaid Charles Bourne was ſuch, as diffuſed comfort, hope, courage, and perſeverance, to me, and all who had an opportunity of obſerving him. And this deponent further ſaith, that he has never known the ſaid Charles Bourne in the leaſt to breed diſſentions or quarrels, but on the contrary, that he was ever foremoſt to make them up, when they happened with other officers; and in the opinion of this deponent, the ſaid Charles Bourne is incapable of any degree of malice, and is a quiet, ſober, amiable, and brave officer.

THE KING

AGAINST

LIEUT. CHARLES BOURNE,

FOR AN ASSAULT.

DEFENDANT's AFFIDAVIT, No. I.

CHARLES BOURNE, the defendant, refers to his other affidavit for a libel in this honourable court, for his original cauſe of quarrel with Sir James Wallace, the proſecutor, and maketh oath and ſaith, that in the month of January laſt, after his return from Bath, and early in February laſt, he was on the recruiting ſervice in Worceſter, and was ordered from thence to Portſmouth, by a letter from Philip Stephens, Eſq. Secretary to the Board of Admiralty, in order to give evidence at a court-martial that was ordered by that board to enquire into the cauſe of the loſs of his Majeſty's late ſhip Le Hector, and that in conſequence of the ſaid order he arrived in London on his way to Portſmouth, about ten o'clock in the evening of the fifth of February laſt, not thinking in the leaſt of the proſecutor, Sir James Wallace; that on the morning of the ſixth of February he, this deponent, met ſeveral of his friends and acquaintances, who told him that Sir James Wallace had taken frequent opportunities of meeting them, and traducing this deponent's character in the moſt vile and prejudicial manner, declaring that this deponent was a coward and a ſcoundrel, and that he, Sir James Wallace, was always ready to fight this deponent, but that deponent dared not meet him. And this deponent further ſaith, that he was the more inclined

clined to believe them from having before ſeen in the Morning Herald, ſigned Sir James Wallace, a letter nearly to that effect; that before he went to Worceſter aforeſaid the ſaid Sir James Wallace had given out to the public his intention of commencing a proſecution againſt this deponent, for a letter he publiſhed in the Morning Herald, and this deponent, in conſequence of the ſaid declared intention, appointed Mr. George Coombe his ſolicitor, and left with him directions to watch the ſaid Sir James Wallace's motions in the courts of law, that this deponent might be prepared to anſwer any charge the ſaid Sir James Wallace might think proper to bring againſt deponent. And deponent ſaith, that the morning after his return from Worceſter, he met the ſaid Mr. Coombe near the Admiralty, who informed deponent, that though the term was drawing to a concluſion, the ſaid Sir James Wallace had taken no ſtep whatever againſt deponent, nor was it his, Mr. Coombe's opinion, that Sir James Wallace would do ſo, but believed he only meant to throw this deponent at a diſtance by ſaid declaration, in which opinion deponent entirely coincided. And deponent further ſaith, that while the ſaid Mr. Coombe and this deponent were in this converſation, the ſaid Sir James Wallace appeared walking towards them. And this deponent further ſaith, that he borrowed a ſmall * *ſwitch cane, with an ivory head* from ſaid Mr. Coombe, and on meeting the ſaid Sir James Wallace, civilly addreſſed him, telling him that that meeting which was accidental, obliged deponent to deſire to know in what manner he the ſaid Sir James Wallace meant to juſtify his conduct towards deponent; to which Sir James anſwered, "In no manner whatſoever." And deponent ſaith, that a warmth of expreſſion took place between the ſaid Sir James Wallace and this deponent, which, in deponent's opinion, was ſuch as left him no alternative, than ſtriking the ſaid Sir James Wallace, which deponent would not have done, could he from his ſenſe of honor have avoided it, and moſt ſolemnly declares it was with the ſmall end of the ſaid cane; not

* See the indictment, and Sir James Wallace's evidence, on page 15 of the trial.

would

would this deponent have repeated the blow given to the ſaid Sir James Wallace, had he not immediately ſtruck at deponent with a large ſized ſtick which he had in his hand. And deponent further moſt poſitively ſaith, that he was not induced to ſtrike the ſaid Sir James Wallace by either malice or ill-will, but only in defence of his reputation; and it was not his intention when he gave the ſtroke to do him the leaſt bodily injury.

AFFIDAVIT of Mr. COOMBE. No. II.

GEORGE COOMBE, of New Inn, in the county of Middleſex, gentleman, maketh oath, that he was walking with the above defendant very near the Admiralty Office, when the above named Sir James Wallace accidentally was walking towards them very near the Salopian Coffee Houſe; and this deponent ſaith, that the ſaid Charles Bourne immediately upon ſeeing the ſaid Sir James Wallace, took a ſmall cane with an ivory head from this deponent, and advanced towards the ſaid Sir James Wallace, *that upon his coming up with the ſaid Sir James Wallace, the ſaid Charles Bourne addreſſed him in a polite manner, making a bow before he ſpoke, and entered into a converſation with him, the particulars of which the deponent could not hear*, but from the motion of Sir James's lips is convinced he made him anſwers. And this deponent ſaith, that after about a minute's converſation he ſaw the ſaid Charles Bourne ſtrike the ſaid Sir James Wallace with the ſmall end of the cane, when immediately the ſaid Sir James Wallace defended himſelf with a large ſized ſtick, and ſtruck, or endeavoured to ſtrike, the defendant with the thick end of it, and a cudgelling enſued between the parties for a few minutes, when they parted. And this deponent ſaith, he believes the ſaid Charles Bourne would not have repeated the blows but to defend himſelf from being beat by the ſaid Sir James Wallace, and that he did not conſider the beating at all as a ſevere one, from the ſize of the cane, which he is of opinion could not do material injury to any one.

AFFIDAVIT

AFFIDAVIT of Mr. PEARCE. No. III.

WILLIAM PEARCE of Catherine-ſtreet in the Strand, in the county of Middleſex, Eſq. maketh oath, that he was croſſing the ſtreet, nearly oppoſite the Admiralty, at the time the affray happened between the above proſecutor and defendant; that he ſaw the tranſaction, that Sir James Wallace had a large ſtick in his hand, and the defendant a ſmall cane, and this deponent ſaith, that the caning of the ſaid Sir James Wallace by the ſaid defendant, was not, in this deponent's opinion, by any means a ſevere beating, ſo far as bodily pain could be concerned; nor does this deponent think it poſſible, from the ſize of the cane, which had an ivory head, and with which he has walked numerous times, to have done any perſon material injury with it, in the manner it was uſed by the defendant, as this deponent avers Lieut. Bourne ſtruck Sir James Wallace with the ſmall end of it only.

THE KING

AGAINST

LIEUT. CHARLES BOURNE,

FOR AN ASSAULT.

Sir JAMES WALLACE's AFFIDAVIT.

SIR JAMES WALLACE, of Hanworth, in the county of Middlesex, Knight, maketh oath and saith, That the defendant, Charles Bourne, embarked as the first Lieutenant of marines on board his majesty's ship the Warrior, under the command of this deponent, some time in November, 1781, whilst the said ship was at Portsmouth, fitting out for a voyage to the West Indies. And this deponent saith, that on or about the 11th day of January, 1782, the Warrior sailed from Portsmouth, and arrived at Madeira on or about the first or second of February, and that on her arrival there this deponent told Mr. Spry, the first lieutenant of the said ship, that all the officers belonging to the ship might go ashore every day whilst they lay there, but that this deponent expected them to sleep on board every night, observing to him at the same time, that as the combined fleets were then out, they should look very ridiculous if any of their cruizers should run in there in the night and take the ship without any of her officers being on board. And this deponent saith, that on Saturday, the second of February, according to the best of this deponent's recollection as to the time, this deponent introduced the said Charles Bourne, with some of his other officers, to Mr. Murray, the British consul there, where he dined with this deponent; and a little time before the company that dined

dined there broke up for the evening, the ſaid Charles Bourne aſked this deponent's permiſſion to continue on ſhore for that night; and this deponent being unwilling to mortify him by a refuſal of his requeſt before ſo large a company, gave him leave to ſtay on ſhore for that night, notwithſtanding the public order which this deponent had before given for the officers to ſleep on board. And this deponent ſaith, that the ſaid Charles Bourne continued on ſhore not only that night, but all the next day, and the night following, and great part of the third day, and got into broils and quarrels with the inhabitants, and behaved ſo indecently at the Theatre as to be turned out during the performance, as this deponent hath been informed and believes.* And this deponent ſaith, that the morning after the ſaid Charles Bourne returned to the ſhip, he ſent a note to this deponent, who was then on ſhore, in the name of himſelf and Mr. Markett, one of the lieutenants of the ſaid ſhip, thanking this deponent for his polite introduction of them to the Governor of Madeira, acknowledging themſelves indebted to this deponent for the civilities which they had received, and the polite treatment which they had experienced from the inhabitants whilſt they were on ſhore (alluding, as this deponent believes, to their having been beaten and ill-treated by the inhabitants, and turned out of the Theatre.†) And this deponent ſaith, that the Warrior was then preparing to leave Madeira, and that the morning after he went on board this deponent ſent for the ſaid Charles Bourne and Mr. Markett into his cabin, and before Major Varlo and Mr. Spry, who he had deſired to be preſent, and who were then in the cabin, aſked them what they meant by the note which they had ſent to this deponent; when the ſaid Charles Bourne made anſwer, that they thought this deponent had uſed them very ill in not having introduced them to the Governor

* See the affidavits of Mr. Markett, Monke, Richards, Hodge, and Bourne, declaring the falſity of this aſſertion.

† The letter here alluded to was as follows:

"Mr. Markett and Mr. Bourne preſent their grateful compliments to Sir James Wallace, muſt attribute the reſpectful attention they met with on ſhore, as Britiſh officers, wholly to his polite, and undoubtedly proper introduction.

yernor of Madeira, upon which this deponent told them that if they thought ſo, he, this deponent, from that time could be no longer acquainted with them; but this deponent poſitively ſaith, that he did not then put the following queſtion to the ſaid Charles Bourne, viz. "Why, if you thought yourſelf aggrieved or affronted, did not you call me out," or uſed any other words to that or the like effect. * And this deponent ſaith, that as the ſaid Charles Bourne never made any apology to this deponent for ſuch improper conduct, nor ſeemed to be ſenſible that he had acted with any impropriety, he never afterwards dined with this deponent at his table. And this deponent ſaith, that on or about the 8th of March, the Warrior joined Lord Rodney's fleet, and continued with it until after the engagement of the 12th of April, when they ſailed with the ſquadron under the command of Lord Hood, for Jamaica, but ſeparated from that ſquadron in chace of ſome of the French ſhips on the twenty-firſt of April, and did not join it again until they arrived at Jamaica; and this deponent ſaith, that between ten and eleven o'clock in the night of the twenty-fourth of April, 1782, according to the beſt of this deponent's recollection as to the time, whilſt this deponent was ſitting in his cabin, with Major Varlo and Mr. Spry, a great noiſe was made in the ward-room, and a meſſage ſent up to this deponent to know if he had ordered the ward-room lights to be put out, upon which this deponent told the ſaid Mr. Spry to go down, and to enquire into the reaſon of the diſturbances, and ſuch meſſage, which the ſaid Mr. Spry accordingly did, and on his return informed this deponent that Mr. Bourne had been making much noiſe, and that Mr. Stephenſon, the then acting lieutenant, who was then in bed, was to turn out to keep the middle watch, had repeatedly deſired Mr. Bourne not to make ſo much noiſe, as it prevented him from ſleeping; and on Mr. Bourne taking no notice of this requeſt, he had ordered the ward-room lights to be put out, which had occaſioned very high words, and a challenge between the ſaid Charles Bourne and Mr. Stephenſon.

* Thoſe expreſſions are poſitively affirmed by the affidavits of Lieutenants Markett and Bourne.

Stephenſon. * And this deponent ſaith, that conceiving it a point of duty to take notice of ſuch proceedings, this deponent ſent for the ſaid Charles Bourne, into his cabin, and aſked him in the preſence of Major Varlo and Mr. Spry, who were then ſitting with this deponent, how he, the ſaid Mr. Bourne, could ſend up a meſſage to this deponent, to know if this deponent had ordered the ward-room lights to be put out, when he, the ſaid Charles Bourne, knew that this deponent had not given any ſuch orders; to which the ſaid Charles Bourne replied, that he thought this deponent had given ſuch orders, or Mr. Stephenſon would not have done ſo. And this deponent then told the ſaid Charles Bourne, that he was a very troubleſome man, and he went out of the cabin muttering ſomething to himſelf. And this deponent poſitively ſaith, that neither the maſter, or ſurgeon, nor Mr. Stephenſon, the ſecond lieutenant, or any of them, were then, or ever had been that evening, in this deponent's cabin, and that nothing that was ſaid or done by the ſaid Mr. Stephenſon, in the ward-room, or that happened between the ſaid Mr. Stephenſon and Charles Bourne, was at the inſtance of this deponent, nor was this deponent in any manner privy to or knew thereof. † And this deponent alſo poſitively ſaith, that the ſaid Charles Bourne did not repeat any meſſage from the gentlemen of the ward-room to this deponent, nor did this deponent deſire the ſaid Charles Bourne to get away, nor ſay any thing more to him, than that he was a troubleſome man, as herein before is mentioned. ‡ And this deponent ſaith, that the next day this deponent was walking on the larboard ſide of the quarter-deck, when the ſaid Charles Bourne came up to the deponent with a very aſſuming air and geſture, and once or twice

* See the affidavits of Lieutenant Markett, Monke, Richardſon, Hodge, Mr. Richards, Purſer, and the defendant; who were all preſent; deſcribing this tranſaction as it really occurred.

† Lieutenant Monke ſwore poſitively that he ſaw Lieut. Stephenſon come out of Sir James Wallace's cabin.

‡ Lieutenant Monke, who was officer of the watch at this time, alſo poſitively declares the fallacy of this aſſertion, and accurately deſcribes the conduct of Sir James Wallace; the defendant himſelf is not leſs circumſtantial and oppoſite in his affidavit.

twice paſſed this deponent in a manner that appeared to this deponent to convey an intended inſult to him, or intention to provoke him to take ſome notice of the ſaid Charles Bourne's behaviour, upon which this deponent called to Mr. Spry, who was then walking on the oppoſite ſide of the deck, and ſaid to him, "Mr. Spry, my orders are that Mr. Bourne does not walk with me;" upon which the ſaid Mr. Bourne quitted that ſide of the quarter-deck where this deponent was walking, and either went to the oppoſite ſide of the deck, or into the ward-room, without making any ſuch remonſtrance to the knowledge of this deponent, againſt this deponent's ſaid order, as by his affidavit is alledged. * And this deponent ſaith, that it is a very unuſual thing, and contrary to the cuſtom of the navy, for any officer, or other perſon on board any of his majeſty's ſhips, to walk or attempt to walk on the quarter-deck with the captain of any of the ſhips, contrary to his will and pleaſure, every captain of any of his majeſty's ſhips of war having an undoubted priviledge of walking the quarter-deck, either alone, or with any perſon on board the ſhip that he may think proper to walk with. And this deponent poſitively ſaith, that he was walking upon the larboard ſide of the quarter-deck, when the ſaid Charles Bourne came upon that ſide of the quarter-deck, and abſolutely denies, that he either then, or at any other time, on ſeeing the ſaid Charles Bourne on the quarter-deck, came running out of his cabin in a violent manner, with his fiſts clenched, to the ſaid Charles Bourne's face, muttering the word ſcoundrel, or ever with his fiſts clenched in a menacing and provoking manner, driving the ſaid Charles Bourne from ſide to ſide of the ſaid ſhip, or that during the voyage of the ſaid ſhip Warrior, from England to Jamaica, the ſaid Charles Bourne experienced from this deponent ſeveral or any inſtances of inſult, outrage, and unofficer-like behaviour, as the ſaid Charles Bourne has very

* The abſolute control of captains of the navy on board the ſhips they command is not denied; but it is univerſally admitted, that a prohibition of this kind is the greateſt perſonal inſult that can be offered to a gentleman and a commiſſioned officer, as the intent is to degrade. The defendant conſidered it as ſuch, and can never be induced to give up that opinion.

very untruly depoſed. * And this deponent alſo denies that this deponent then walked ſeveral times backwards and forwards in a rage, and then went into his cabin and returned, and called for Lieutenant Spry to attend his public orders, or that this deponent ever gave any other orders upon that occaſion, or in any other manner than as before mentioned, or then held ſuch converſation with the ſaid Charles Bourne, touching ſuch orders, or that the ſaid Charles Bourne then deſired this deponent to confine him in a regular way, as the ſaid Charles Bourne has alledged. And this deponent ſaith, that in about ſix days afterwards, the Warrior arrived at Jamaica, and was ſoon after ordered by Lord Rodney on a cruize to the windward; and this deponent ſaith, that he believes the defendant then wrote ſome letter to Lord Rodney, requeſting an inquiry into his conduct, and that Lord Rodney ſoon afterwards ordered the ſaid Charles Bourne from on board the Warrior into the Hector, one of the French ſhips, taken by him in the engagement on the twelfth of April, for which this deponent has no doubt that Lord Rodney had then his ſufficient reaſons, but this deponent ſaith, that if he, this deponent, had then been diſpoſed to bring the ſaid Charles Bourne to a court-martial, or had conceived that implacable hatred againſt him which he has alledged, he would inevitably have been broke, and for ever diſmiſſed the ſervice, for his repeated diſorderly behaviour during the time he was under this deponent's command on board the Warrior, as this deponent verily

* Upon this memorable occaſion Lieut. Monke was alſo preſent, and the reader is moſt earneſtly requeſted to attend to his depoſition. Sir James Wallace ſwears that he never did uſe any ſuch indecent and violent conduct, but it is hoped the concurring depoſitions of Lieutenants Nicholſon and Monke together, with that of the defendant himſelf, will have that weight with the public which ſuch combined evidence demands; and here it muſt be obſerved, that ſuch were the injuries and oppreſſions which the defendant ſuffered, and ſuch the intire conviction of the propriety of his own behaviour, that he demanded not only a court-martial upon Sir James Wallace, but an enquiry into his own conduct. The enquiry, if any had taken place, was to have been by captains of men of war, the peers of Sir James Wallace, from whom the defendant had as little reaſon to expect partiality in his favour, as he had to apprehend any thing ſhort of rigid juſtice; and it is very obſervable that at this time Sir James Wallace tried one of the Lieutenants of the ſhip by a court-martial.—If he had thought the behaviour of the defendant reprehenſible, is it probable he would have omitted ſo favourable an opportunity of doing himſelf juſtice?

verily believes. And this deponent further ſaith, that ſo far from being ill-diſpoſed towards the ſaid Charles Bourne, this deponent hath on ſeveral occaſions ſhewn his lenity and forbearance towards him, and in particular this deponent ſaith, that ſoon after the ſaid Charles Bourne embarked on board the Warrior, he aſked this deponent's leave to go to London for three days, on particular buſineſs, which this deponent told him he could not grant, but that as it was particular buſineſs which required his going, and that only for three days, this deponent would take no notice of his abſence during that time. And this deponent ſaith, that the ſaid Charles Bourne accordingly went to London, and did not return again to the ſhip for fifteen days, which this deponent overlooked. And this deponent ſaith, that in the duſk of the evening of the fifteenth of May, according to the beſt of this deponent's recollection as to the time, as this deponent was walking in the ſtreet in Port-Royal, in company with Major Varlo, the ſaid Charles Bourne met them, and ſaid that he had ſomething to ſay to this deponent in private, when this deponent told him that if he had any thing to ſay to this deponent, to ſay it before Major Varlo, that he might hear it, for that this deponent would have nothing to ſay to the ſaid Charles Bourne in private, upon which the ſaid Charles Bourne turned away, ſaying, it is very well, and which was all that then paſſed between the ſaid Charles Bourne and this deponent. * And this deponent ſaith, that he then told Major Varlo what he, this deponent, apprehended the ſaid Charles Bourne then meant, and alſo this deponent's own ſentiments and intentions thereon. And this deponent ſaith, that on or about the ſeventeenth day of May, the Warrior ſailed on a cruize to the windward, from which ſhe returned in about two months; and this deponent being at that time in a bad ſtate of health, found it neceſſary for his recovery to go to Europe; and his majeſty's ſhip Reſolution being then under orders to ſail for England, this deponent was on or about the twelfth day of July, appointed by Lord Rodney to the command of the ſaid ſhip. And this deponent ſaith, that on or about the

* The public would no doubt have been very much indebted to Sir James Wallace, if he had been equally communicative and candid to them alſo.

the twentieth of July, being two days before he was to ſail from Port-Royal for England, as he, this deponent, walking up a narrow lane in Port-Royal, the ſaid Charles Bourne came out of a negro hut, and aſked this deponent if he had any thing to ſay to him, to which this deponent anſwered he had not; and the ſaid Charles Bourne then replied, he had ſomething to ſay to this deponent if he would walk with him in private, upon which the ſaid deponent told the ſaid Charles Bourne, that he was determined never to have any thing to ſay to him in private. * And this deponent thereupon putting his hand upon his ſword, told the ſaid Charles Bourne to ſay before Captain Fiſher of the Navy (who was then with this deponent) what he would be at, upon which the ſaid Charles Bourne left them, making uſe of ſome abuſive language, and joined an officer of marines, who was then at ſome diſtance from them. And this deponent abſolutely denies that he then promiſed, or ſaid to the ſaid Charles Bourne, that he, this deponent, would do his duty, and that the ſaid Charles Bourne ſhould hear from this deponent, or that any ſuch words then paſſed, or any thing more than happened between the ſaid Charles Bourne and this deponent, than as before mentioned. And this deponent ſaith, that as he was then ready to ſail for England, this deponent did not think it neceſſary or requiſite for him to ſtay there for any further explanation from the ſaid Charles Bourne. And this deponent ſaith, that he did not remain on the ſaid iſland for ſome weeks after, for that in two days afterwards, according to the beſt of this deponent's recollection, this deponent ſailed from Port-Royal, and arrived at Portſmouth on or about the twenty-ſixth of September following. And this deponent ſaith, that ſome little time afterwards he went to Bath for his health, and in the beginning of December this deponent had fixed to return to London with his family, and his houſe at Bath was let to another family, and about two days before he was to have left Bath, a waiter from the White Hart Inn came to this deponent into his dining-room, where he was ſitting with

* See the depoſitions of Captain Green and Bourne, Lieutenants Johnſon, Peacock, and Robinſon, and Mr. Wear, Surgeon of the London; how differently thoſe gentlemen deſcribe this meeting, which was, in truth, while Sir James Wallace retained his command of the Warrior.

Lady Wallace, and delivered a verbal meſſage to this deponent, that a gentleman wanted to ſpeak to this deponent at the White Hart; and this deponent then aſked the waiter, who the gentleman was, and what was his name, which the waiter told this deponent he did not know, but that he had a foreign ſervant with him. And this deponent told the waiter to go back and aſk the gentleman his name. And this deponent ſaith, that the ſaid waiter ſome little time after returned, and told this deponent that the gentleman would not ſend his name, but deſired to know whether this deponent would go to him or not; upon which this deponent ſaid he moſt certainly would not go to any one who would not ſend his name. And this deponent ſaith, that the waiter ſoon afterwards returned, and told this deponent that the gentleman's name was Bourne, upon which this deponent ſaid that he had no buſineſs with that gentleman. And this deponent ſaith, that ſome time afterwards the ſame waiter brought this deponent the letter, or paper writing, from the ſaid Charles Bourne, of which the following is a copy:

"Mr. Bourne acquaints Sir James Wallace, that if "he perſiſts in not ſeeing him, it will confirm the opinion "Mr. Bourne has long entertained that Sir James Wal- "lace is deſtitute of every principle of honour, and "idea of a gentleman. Mr. Bourne underſtanding that "Sir James Wallace has ladies with him, is the reaſon "he does not call on him in perſon."

White-Hart, Friday Noon, Dec. 6th. 1782.

Sir James Wallace.

And this deponent ſaith, that as the ſaid Charles Bourne had been before acquainted, that this deponent was determined not to have any private interview with him, this deponent therefore apprehended, that the ſaid Charles Bourne had ſome diſhonourable deſign againſt this deponent, and therefore thought it neceſſary to put himſelf upon his guard, and accordingly took his piſtols in his pocket, when he went out the next morning. And this deponent ſaith, that after he had walked about for ſome time, in the public ſtreets and places, and was on

his

his return home, in the ſtreet where he lodged, he ſaw the ſaid Charles Bourne, at the diſtance of about one hundred yards, in company with captain Webber of the marines, walking down the ſtreet, towards this deponent, and that the ſaid captain Webber, upon ſeeing this deponent, left the ſaid Charles Bourne, and kept at ſome diſtance, whilſt the ſaid Charles Bourne walked towards this deponent*. And this deponent ſaith, that as ſoon as the ſaid Charles Bourne came within a few paces of this deponent, he began to accoſt this deponent with ſaying, that he had been looking for him, and was glad he had met with him at laſt, upon which this deponent interrupted him by ſaying, I can have no converſation with you, Sir. And this deponent doth acknowledge, that he did thereupon make uſe of theſe further expreſſions, Send your friend, propoſe your terms, I am provided for you, and this deponent thereupon took one of the piſtols out of his pocket, and ſhewed the ſame to the ſaid Charles Bourne, and told him to take care how he inſulted this deponent, for if he intended to inſult him, he would inſtantly put him to death, upon which the ſaid Charles Bourne retreated to ſome diſtance, and then uttered the moſt foul and ſcandalous abuſe.

And this deponent ſaith, that he thereupon went immediately to the lodgings of captain Nugent of the navy, who was then at Bath, to requeſt him to be preſent with this deponent, in order to bear teſtimony what the ſaid Charles Bourne might have to ſay to this deponent, in caſe he ſhould ſend any meſſage to this deponent, in conſequence of what this deponent had then ſaid to him in the ſtreet. And this deponent, not meeting with captain Nugent at home, went immediately to admiral Sir Peter Parker's, to communicate the ſubject to him, and where this deponent met captain Nugent, who in a very friendly manner offered to be preſent at any interview this deponent might have with the ſaid Charles Bourne. And this deponent ſaith, that he afterwards walked into

* The defendant's depoſition, as to this meeting and converſation, fully contradicts this account, and the reader will recollect that Sir James Wallace is now ſwearing to re-eſtabliſh his reputation as a man of courage and a gentleman, againſt which, Mr. Bourne brought a public charge.

the Creſcent, where he met Mr. Abbott, a lieutenant in the navy, who came home with this deponent from the Weſt-Indies, as firſt lieutenant of the Reſolution. And the ſaid Mr. Abbott, in converſation aſked this deponent if he had ſeen Mr. Bourne, on which this deponent told the ſaid Mr. Abbott of all that had paſſed between the ſaid Charles Boorne and this deponent, and at the ſame time aſked him, in caſe captain Nugent ſhould be prevented by an engagement at the time, to be preſent at any interview this deponent might have with the ſaid Charles Bourne, which he very readily promiſed to do, and continued with this deponent all that day. And this deponent ſaith, that upon his return home to dreſs before dinner, he received another letter from the defendant, Charles Bourne, of which the following is a copy, "Sir, "I yeſterday, by letter, acquainted you, that I conſidered you as deſtitute of every principle of honor and "every idea of a gentleman—Your infamous behaviour "this morning in the ſtreet, convinces me, that you "are a daſtardly coward and ſcoundrel—When I was "in the ſhip you commanded, you treated me with the "moſt unmerited inſolence and abuſe, becauſe you knew "that it was not in my power, from my ſituation at that "time, to reſent it; when no longer under your com-"mand, I ſeized the firſt opportunity that offered, at "Jamaica, of demanding that ſatisfaction which an injured *gentleman* has a right to expect; but you meanly "and cowardly retreated from my reſentment at that "time, by giving me to underſtand, that I ſhould hear "from you, but in that you proved yourſelf a liar.

"I flew to Bath immediately on my arrival in England, "my meſſages and notes to you yeſterday muſt have "convinced you of my intentions, but you dared to of-"fer inſults at a time, when you knew they could not "be reſented; you have not reſolution to meet the man "whom you have ſo greatly injured—your flying from "Bath, ſhall not protect you from my reſentment; the "inſults I have received from you are too great to be "forgotten or forgiven. I will expoſe you in the pub-"lic prints, as the ſcoundrel I know you to be, and "treat you as ſuch wherever I meet you, for which

"purpoſe

" purpoſe I will follow you to London, or any part of " world.

White harſ, Dec. 7, 1782. Charles Bourne."

" To Sir James Wallace."

Which letter this deponent ſhewed to the ſaid Mr. Abbott, whilſt he was at dinner with this deponent, and afterwards adviſed with him upon the contents of it, which in the opinion both of this deponent and the ſaid Mr. Abbott, was no anſwer to what had paſſed between this deponent and the ſaid Charles Bourne, and as it did not appear to this deponent, that the ſaid Charles Bourne had any intention of being more explicit, or that his deſigns were honourable to this deponent, this deponent reſolved not to detain his family there any longer, on his account, and accordingly left Bath the next day, about one o'clock, agreeable to his prior engagement*. And this deponent ſaith, that ſoon after his arrival from Bath, this deponent was informed, that the ſaid Charles Bourne had moſt ſhamefully traduced this deponent's name and character, and done every thing that he could deviſe, to prejudice the minds of the public againſt this deponent; That he had declared, that whilſt he was on board his Majeſty's ſhip the Warrior, and under this deponent's command, this deponent had holden his fiſt up at him, called him a ſcoundrel, told him if he loved fighting, he would make him ſhit bullets, and that at Jamaica, he, the ſaid Charles Bourne, had challenged this deponent, and that this deponent had refuſed to fight him, that he, the ſaid Charles Bourne, had ſeized the deponent by the collar there, and torn his collar, and that after his arrival in England, he had again challenged this deponent at Bath, and that this deponeent had refuſed to fight him there; and that he had caned this deponent there, ; and and that on his return to London, he had ſent Lord Cork to this deponent with a challenge, which this deponent had

* Does Sir James Wallace mention this as a ſerious, natural concluſion from the defendant's ſubſequent letter, and from his calling at his houſe after their meeting.

had alſo refuſed. And this deponent poſitively ſaith, and moſt poſitively declares, that all, and every, the ſaid ſeveral aſſertions and declarations, of the ſaid Charles Bourne, were, and are, abſolutely falſe and untrue. But this deponent ſaith, that finding at this time, that the ſaid Charles Bourne had involved his diſpute with this deponent with ſundry falſhoods, to prejudice the minds of any perſon, who heard the ſame againſt him, this deponent therefore thought it indiſpenſably neceſſary to have the matter enquired into, and with that view wrote a letter of complaint, againſt the ſaid Charles Bourne, to the lords of the admiralty, who acquainted this deponent, that he ſhould before have repreſented the ſaid Charles Bourne's behaviour to the commanding officer, that a court martial might have been aſſembled to try him for the ſame; and this deponent ſaith, that a publication having appeared in the Morning Herald, of the ſixteenth of December laſt, caſting very pointed, ſcandalous aſperſions upon this deponent's character, and this deponent verily believing that the ſame was written and publiſhed by the ſaid Charles Bourne, and having been informed that the ſaid Charles Bourne was then going about, from one coffee houſe to another, and in every place moſt maliciouſly publiſhing various falſe and ſcandalous reports, with an intent to vilify this deponent, and to impeach his veracity, courage, and honor, this deponent, in order to prevent reports ſo injurious to his character and honor, from having the effect deſigned by the ſaid Charles Bourne, wrote the letter publiſhed by him, in the Morning Herald of the twenty-firſt of December laſt, as this deponent was not at that time in poſſeſſion of proof to convict the ſaid Charles Bourne of being the author of ſuch falſhoods*; but this deponent ſaith, that ſoon afterwards, obtaining ſufficient proof of the ſame, and, in particular, that the Right Honourable the Earl of Cork, who, the ſaid Charles Bourne had aſſerted, had waited upon this deponent with a meſſage from the ſaid Charles Bourne, had never even undertaken to wait upon this

* Sir James Wallace here acknowledges himſelf to have been the *original* libeller, yet the Court of King's-bench did not heſitate to fine the defendant for that offence 50l.

this deponent with any ſuch meſſage, therefore this deponent, conſcious of the falſhood of the ſeveral reports which had been propagated, to vilify and traduce his name and character, commenced the preſent proſecution againſt the ſaid Charles Bourne, to bring his veracity to a public trial. And ſaith, that long before the ſaid Charles Bourne made the aſſault upon this deponent, of which he ſtands convicted, in the public ſtreet, the ſaid Charles Bourne had been informed, and knew, that he had defamed and traduced this deponent; and he hath been told both by Mr. Dundaſs, a captain, and Abbott, a lieutenant in the navy, that he had never ſent any gentleman with a meſſage to this deponent, as he had aſſerted; and he had alſo been told, that the Right Honorable the Earl of Cork had contradicted the report which he had propagated, of his lordſhip's having waited upon this deponent with a meſſage from him, and tha this lordſhip had alſo diſavowed his ever having either waited, or undertaken to wait upon this deponent, with any ſuch meſſage; and the ſaid Charles Bourne had, in preſence of captain Cruikſhanks, of the thirty-ſixth regiment of foot, aſked his lordſhip's pardon for having made ſuch uſe of his name. And the ſaid Charles Bourne alſo very well knew that a proſecution was carrying on againſt him, in this honourable court, by this deponent, in order to convict him of all his falſe aſſertions, and that the ſame would go before the grand jury in a few days, at the time he made this attack upon this deponent, for which, as well as for his falſe and ſcandalous libel upon this deponent, he ſtands to receive the judgment of this honorable court.

James Wallace.

Sworn at my chambers
in Serjeant's-Inn,
July 1, 1783.

E. WILLES.

THE

THE KING

On the PROSECUTION of

SIR JAMES WALLACE, KNT.

AGAINST

LIEUT. CHARLES BOURNE.

AFFIDAVIT. No. II.

SIR JAMES WALLACE, of Hanworth, in the county of Middlesex, Knt. and William Sleigh, of Whitehall, Westminster, in the same county, Esq. jointly and severally make oath and say, that some time in or about the month of August, one thousand seven hundred and eighty-one, these deponents, between seven and eight o'clock, one evening, in company with William Thompson, Esq. the commander of the ship Calcutta, in the service of the East-India Company, and who is now in the East-Indies, or China, as this deponent believes, were going to take a boat at Whitehall-stairs, and that upon the causeway, leading from the stairs at Whitehall, into the bed of the river, where the boats lay at low water, which it then was, these deponents found a man walking down the side of the river, with two children on the one side of him and a dog on the other, and in order to pass them upon the causeway, which could not be conveniently or easily done, without making the dog either go forwards or to one side, the deponent, Sir James Wallace, gave the dog a stroke with his stick for that purpose, when the man, whom these deponents afterwards found to be a Mr. Murphy, who then lived in apartments or lodgings, in the upper part of the chapel stair-case, at Whitehall, began to make use of very uncivil and abusive language, and with his fist struck this deponent, Sir James Wallace,

* See the affidavit of Mr. Murphy and John Jackson, and Mr. Bourne, describing this affair.

lace, a blow in his face, which bruiſed and a little cut one of his lips, whereupon this deponent, Sir James Wallace, immediately ſeized upon the ſaid Mr. Murphy, in order to correct and puniſh him, for his inſolent behaviour, which occaſioned a little ſcuffle between ſaid Murphy and this deponent, Sir James Wallace, which was immediately put an end to, by the interpoſition of the ſaid William Thompſon, and this deponent, William Sleigh, and the ſaid Mr. Murphy went away towards Whitehall, and this deponent, William Sleigh, attended him, to know who he was, and where he lived, and this deponent, Sir James Wallace, and the ſaid William Thompſon, followed them to the ſaid Murphy's lodgings, up the chapel ſtair-caſe, at Whitehall, where they found the defendant Bourne, and upon this deponent, Sir James Wallace's, reprehending the ſaid Murphy for his rude and inſolent behaviour, the defendant Bourne, with great warmth and fury, took part with the ſaid Murphy and attempted to juſtify his conduct, upon which theſe deponents believe, that this deponent, Sir James Wallace, might aſk the defendant Bourne, if he wanted to take the quarrel upon himſelf, but both theſe deponents deny, that this deponent Sir James Wallace then ſeized the defendant Bourne by the breaſt, and demanded to know if he would fight, but theſe deponents ſay, that there were very high words on both ſides, and that the ſaid Murphy, or the defendant Bourne, demanded, as theſe deponents then knew where to find them, to know who theſe deponents, and the ſaid William Thompſon, were, which was told them, when they both immediately expreſſed the greateſt contrition for what had happened, and the ſaid Mr. Murphy wiſhed his dog had been in the Thames*. And this deponent, William Sleigh, for himſelf ſaith, that in a day or two afterwards, according to the beſt of this deponent's recollection, as to the time, a letter was left at this deponent's houſe, at Whitehall, addreſſed to the ſaid Sir James Wallace, who was then in the country, and ſealed with a wafer, upon which there appeared an impreſſion of a cypher of two letters, one of which being an M. lead this deponent to ſuppoſe, the ſaid letter might have been ſent by the ſaid Mr. Murphy, and therefore this deponent called upon the defendant

* For the contradiction of theſe facts ſee the joint affidavits of Mr. Murphy and John Jackſon.

Charles Bourne, and ſhewed him the ſaid letter, and aſked him if it was written by the ſaid Mr. Murphy, when the ſaid Mr. Bourne informed this deponent it was not, and this deponent then told him if it had, this deponent would not have ſent the ſame to the ſaid Sir James Wallace, who was then at his houſe at Hanworth, as he did not chooſe to trouble him about ſuch a ridiculous affair, and the ſaid Charles Bourne then ſaid to this deponent, that he was very ſorry that ſuch a thing had ever happened; but this deponent denies that he intreated the ſaid defendant, Charles Bourne, to interfere, as he had done before, to prevent the conſequences that might attend the ſaid Sir James Wallace's meeting with the ſaid Mr. Murphy, or that this deponent was much diſtreſſed about the ſame. And this deponent ſaith, that he was not then apprehenſive of any further difference between the ſaid parties, as the ſaid Mr. Murphy had, before they parted, expreſſed his concern for what had happened*. And this deponent, Sir James Wallace, for himſelf ſaith, that he, ſome little time afterwards, received a letter from the ſaid Mr. Murphy, of which the following is a copy.

Whitehall-chambers,
Sep. 19, 1781.

SIR,

Extraordinary accidents are generally productive of extraordinary effects, perhaps no one ever more ſo than in the preſent inſtance, that which occurred between you and me at Whitehall-ſtairs; notwithſtanding that accident, I continue to retain the higheſt eſteem for Sir James Wallace, and as a proof have adopted this method of becoming debtor to his goodneſs.

A very deſerving youth, of ſixteen years of age, who has been three years at ſea, and is eſteemed a good ſeaman, wants very much to be rated a midſhipman, he is a young fellow of ſpirit, and am convinced under the patronage

* If Mr. Sleigh was not apprehenſive of the conſequences of the letter, why did he heſitate giving it to Sir James Wallace, and call on Mr. Bourne, to enquire whether Mr. Murphy had ſent it? and if Mr. Murphy and Mr. Bourne had expreſſed contrition for what had happened, why ſhould the initial M, marked on the letter, prevent Mr. Sleigh giving, or ſending it, as he would any other letter, to Sir James Wallace? Had Mr. Murphy expreſſed *contrition*, what danger could there have been in a letter ſubſequent to ſuch *contrition*?

patronage, and from the example of Sir James Wallace, would be of ſervice to his country. After this, I need only aſſure you, Sir, that I remain with great reſpect,

Your moſt obedient, humble ſervant,

Ar. Charters Murphy.

Both ſworn at my chambers in Serjeant's-inn, July 1, 1783.

E. WILLES.

JAMES WALLACE.
W. SLEIGH.

AFFIDAVIT of Lieutenant SPRY. No. III.

THOMAS SPRY*, of Portſmouth, in the county of Hants, gentleman, a lieutenant in his Majeſty's royal navy, maketh oath and ſaith, that he was appointed the firſt lieutenant of his Majeſty's ſhip the Warrior, under the command of Sir James Wallace, upon, or very ſoon after the ſaid Sir James Wallace's being appointed to the command of the ſaid ſhip, and that this deponent continued to be the firſt lieutenant of the ſaid ſhip, from that time, during the whole of her voyage to the Weſt-Indies, and until, or about the fifteenth day of May, one thouſand ſeven hundred and eighty-two, when this deponent was appointed a lieutenant of his Majeſty's ſhip, the Barfleur, then at Jamaica, under the command of Lord Hood, and lately arrived at Spithead, and of which ſhip this deponent is ſtill a lieutenant. And this deponent ſaith, that the defendant, Charles Bourne embarked, as firſt the lieutenant of marines, on board the ſaid ſhip the Warrior, ſome time in the month

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* The conduct of this man was ſo exceptionable while on board the Warrior, that the officers of the ward-room unanimouſly expelled him from their meſs, and, as far as poſſible, from their ſociety; holding it diſgraceful to converſe with him, unleſs when the duties of ſervice made it indiſpenſably neceſſary. In conſequence of this degradation, Sir James Wallace admitted him to his meſs, and had him removed into the Barfleur, to protect him from that contempt and obloquy towhich his conduct had rendered him obnoxious, on board the Warrior.

of November, one thouſand ſeven hundred and eighty-one, according to the beſt of this deponent's recollection as to the time. And this deponent ſaith, that at that time there were ſeveral other marine officers, who were very deſirous of ſerving on board the ſaid ſhip, and that the ſaid Charles Bourne, who very ſoon after his coming on board the ſaid ſhip, became very intimate with this deponent, frequently expreſſed to this deponent, how exceedingly happy he was in being ordered on board the ſaid ſhip, and that he had the *higheſt opinion and reſpect for Sir James Wallace, and would not, on any conſideration, that he ſhould have miſſed, or loſt his chance of being on board his ſhip**. And this deponent further ſaith, that ſome little time after the ſaid Charles Bourne had embarked on board the ſaid ſhip, he informed this deponent that he wiſhed to go to London for two or three days, and ſuppoſed that if he aſked Sir James Wallace's leave he would have no objection to it. And this deponent ſaith, that the ſaid Charles Bourne afterwards went to London, as this deponent believes, but did not return to the ſaid ſhip for upwards of a fortnight, according to the beſt of this deponent's recollection as to the time, and that the ſaid Charles Bourne, upon his return, told this deponent that he had ſtaid longer in town than he ought to have done, and had hurried down for fear of being left behind, which would have diſtreſſed him very much†; and this deponent then told him, as he had arrived in time, before the ſhip ſailed, this deponent knew that Sir James Wallace would take no notice of his having exceeded his time of abſence, but thought that he ought to make ſome apology to the ſaid Sir James Wallace for having done ſo. And this deponent ſaith, that the ſeveral officers belonging to the ſaid ſhip, the Warrior, were at that time living in perfect harmony and friendſhip with each other and continued ſo to do, until ſome little time after they

* For a contradiction of this, ſee the affidavits of lieutenants Sweeney, Markett, Monke, and Bourne, which fully deſcribe the feelings of Mr. Bourne, on being ordered on board the Warrior.

† At this time the ſhip had not got in her maſts, was lying in the harbour, and Sir James Wallace was in London, therefore Mr. Bourne could not poſſibly have entertained any apprehenſion of being left behind.

they left Madeira; for this deponent ſaith, that they arrived at Madeira, ſome time on or about the firſt or ſecond of February, one thouſand ſeven hundred and eighty-two, according to the beſt of this deponent's recollection as to the time, and that the ſaid Sir James Wallace, on his going aſhore there, left orders with this deponent, that he might give any of the officers belonging to the ſhip, leave to go aſhore in the day time, but that they were to return at night and ſleep on board, obſerving to this deponent, that as the combined fleets were then out, ſome of their ſhips might come in there and ſeize the ſaid ſhip the Warrior by ſurprize, which would be a great diſgrace to them. And this deponent ſaith, that he afterwards communicated the above orders to the ſeveral officers belonging to the ſaid ſhip, and that the ſaid Charles Bourne expreſſed great diſſatisfaction, and murmured very much at the ſaid order, and for which this deponent told him he thought him highly blameable, and that their being permitted to go on ſhore whenever they pleaſed, in the day time, was a great indulgence. And this deponent ſaith, that on Saturday, the ſecond of February, according to the beſt of this deponent's recollection as to the time, the ſaid Charles Bourne, and Mr. Markett, then third lieutenant of the ſaid ſhip, went on ſhore, with this deponent's leave, and that before they left the ſhip, this deponent told them, that he would ſend off a boat for them in the evening, before ſun-ſet, to bring them on board again, but this deponent ſaith, that they did not return again to the ſhip until Monday following about noon. And this deponent ſaith, that he hath been informed and believes, that the ſaid Charles Bourne and Mr. Markett went to the theatre there, on the Sunday-evening, to ſee the comedy, *and were in the pit with their hats on, and that a meſſage was ſent to them by the governor of Madeira, who was then in the theatre, to deſire they would take off their hats, it being the cuſtom there for the audience to ſit uncovered during the comedy, and that the ſaid Charles Bourne and Mr. Markett refuſing to take off their hats, a ſerjeant then on duty was ſent by the governor to take off their hats, and that they were thereupon obliged to go out of the theatre, and afterwards got into diſorderly houſes, and ſeveral riots and quarrels with*

the

*the inhabitants, and that they were pelted with ſtones and otherways very roughly treated by the inhabitants**. And this deponent ſaith, that he hath been informed and believes, that the ſaid Charles Bourne and Mr. Markett, or one of them, after they returned on board, wrote and ſent a letter to the ſaid Sir James Wallace, who was then aſhore at Mr. Murray's the Britiſh conſul, thanking him for his polite introduction of them to the governor of Madeira, and acknowledging themſelves indebted to him for the civilities and polite treatment, which they had received from the inhabitants whilſt on ſhore. And this deponent ſaith, that the ſaid Sir James Wallace returned on board the ſaid ſhip the evening before they ſailed from Madeira, and that he then ſhewed the ſaid letter to this deponent, and that the next morning, being the ſeventh of February, according to the beſt of this deponent's recollection, as to the the time, ſoon after the Warrior had ſailed from Madeira, the ſaid Sir James Wallace deſired major Varlo and this deponent to go into his cabin, and then ſent for the ſaid Charles Bourne and Mr. Markett into his cabin, and after having ordered all the ſervants to go out, ſhewed the ſaid letter to the ſaid Mr. Bourne and Mr. Markett, in the preſence of major Varlo and this deponent, who were the only perſons then in the cabin with them, and aſked them if the ſame was their writing, when the ſaid Charles Bourne ſaid, Yes, that it was, upon which the ſaid Sir James Wallace aſked him, what they meant by it, and whether they meant it as an inſult, and if they did, it was very ungentlemanlike behaviour, for two of them to join in ſuch a note to him, when the ſaid Charles Bourne made anſwer, that they thought he thought he had not uſed them well, for that in conſequence of his not having taken proper notice of them on ſhore, and introducing them to the governor of Madeira, they had been very *ill-treated by the inhabitants*, upon which the ſaid Sir James Wallace ſaid to them, that if thoſe were their ſentiments, he and they could be no longer acquainted with each other, or words to that purport or

* Here lieutenant Spry ſwears only from belief and hearſay, but his belief is fully contradicted, and his aſſertion fully falſified, by the affidavits of lieutenants Markett, Monke, Hodge, Bourne, and Mr. Richards, purſer.

or effect*. And this deponent positively saith, that the said Sir James Wallace did not then, or at any other time, that this deponent ever heard of, put the following, or any other such question to the said Charles Bourne, viz. "Why, if you thought yourself aggrieved, or affronted, "did you not call me out;" or use any other words to that or the like effect.† And this deponent saith, that from that time, various disputes and dissentions happened, and parties were formed amongst the officers of the ward-room, and which, this deponent verily believes, *were occasioned by the said Charles Bourne*, who endeavoured as much as he could to prejudice the minds of the officers against the said Sir James Wallace, and was, as this deponent believes, the cause of all the disturbances which afterwards happened on board the ship‡. And this deponent further saith, that between ten and eleven, in the night of the twenty-fourth of April, one thousand seven hundred and eighty-two, according to the best of this deponent's recollection as to the time, this deponent was with Sir James Wallace and major Varlo in Sir James Wallace's cabin, when, after some disturbance which they heard in the ward-room, one of the servants of the ward-room brought up a message to Sir James Wallace, to know if he had ordered the ward-room lights to be put out, upon which the said Sir James Wallace desired this deponent to

* The decided part which lieutenant Spry has taken in this business against Mr. Bourne, is amply accounted for in the first note to this affidavit, and the sedulous and partial conduct of major Varlo in support of Sir James, it is presumed, will sufficiently justify Mr. Bourne in concluding, that they were selected to attend this interview, for the special, though dishonourable purpose, of qualifying to serve Sir James as witnesses on a court-martial, in case Mr. Bourne, or Mr. Markett, had acted incautiously, or had been provoked into any rash expression.

† Messrs. Markett and Bourne positively swear, that Sir James Wallace did say so, and the *affirmative* oaths of two men, whose characters stand unimpeached, must undoubtedly weigh against the oath of this man, who, in consequence of his expulsion from the ward-room mess, and his obligations to the prosecutor, swears under the influence of resentment and personal favours.

‡ This paragraph fully illustrates the preceding note. Here the man *feels* for *himself*, and to palliate the disgrace of expulsion from the ward-room mess, he insidiously transfers a part of it to his *patron* and *friend* Sir James, by stating, that the *minds* of the officers were prejudiced against him. See the joint affidavits of the officers.

to go down into the ward-room and enquire what was the matter there; and this deponent ſaith, that upon going out of the cabin he at the door met the boy, who had brought up the meſſage, and aſked him who ſent up the meſſage, when he told this deponent, that Mr. Bourne had ordered him to come up with ſuch meſſage in the name of the gentlemen of the ward-room.

And this deponent ſaith, that upon his entering the ward room he found the ſaid Mr. Bourne walking up and down, and ſeemingly in a great paſſion, and very much diſcompoſed; that this deponent then ſaw no other officer belonging to the ward-room there, and out of bed, according to the beſt of this deponent's recollection and belief, and upon this deponent aſking the ſaid Mr. Bourne what was the matter, and why he had ſent up ſuch a meſſage to the captain, the ſaid Charles Bourne told this deponent, that Mr. Stephenſon, the ſecond Lieutenant, had uſed him very ill, and had ordered the ward room lights to be put out, which occaſioned him to ſend up the ſaid meſſage to the captain, upon which the ſaid Mr. Stephenſon, who was then in his cot, in the ward-room, and perfectly ſober, for this deponent ſaith, that he never remembers, during the whole time he was on board the Warrior, to have ſeen him intoxicated with liquor, told this deponent that the ſaid Charles Bourne had been making a very great noiſe and diſturbance, and that he, the ſaid Mr. Stephenſon, had deſired him to deſiſt, as he had the middle watch; and the ſaid Charles Bourne diſturbed and prevented him from going to ſleep, and that as the ſaid Charles Bourne would not deſiſt, he, the ſaid Mr. Stephenſon had ordered the ward-room lights to be put out, which had produced very abuſive language from the ſaid Charles Bourne, and an appointment to ſettle the buſineſs between them the next morning, and this deponent ſaith, that the ſaid Charles Bourne appeared to this deponent to be very much diſguſted, and made no reply to what the ſaid Mr. Stephenſon then told this deponent, and this deponent ſaith, that he went back to, and informed the ſaid Sir James Wallace of the ſame, upon which he immediately ordered one of the ſervants to deſire Mr. Bourne to come up to him in his cabin, which the ſaid Charles Bourne accordingly did, when the

the ſaid Sir James Wallace aſked the ſaid Charles Bourne, how he could ſend up a meſſage to him, the ſaid Sir James Wallace, to know if he had ordered the ward-room lights to be put out, when he, the ſaid Charles Bourne, ſaid that he thought he was very ill-uſed, by having the lights put out, and ſuppoſed it had been done by the order of Sir James Wallace, which was the reaſon of his ſending up the ſaid meſſage; and the ſaid Sir James Wallace thereupon told the ſaid Charles Bourne that he was a very troubleſome man, at which the ſaid Charles Bourne ſeemed very much diſpleaſed, and in a ſullen and diſſatisfied manner went out of the cabin, muttering ſomething to himſelf. And this deponent ſaith, that no other perſon or perſons, except the ſaid *Major Varlo and this deponent*, were then with the ſaid Sir James Wallace in his cabin, and that neither the maſter or the ſurgeon of the ſaid ſhip were then, or ever had been there that evening, for that the maſter of the ſaid ſhip was then confined to his bed in the gun room, having loſt his leg about a fortnight before that time in the engagement between the Engliſh and French fleets, on the twelfth of April, 1782. And this deponent ſaith, that he had ſpent the whole of the evening with the ſaid Sir James Wallace in his cabin, and that Mr. Stephenſon, then acting ſecond lieutenant of the ſaid ſhip, had never been in the ſaid cabin during the whole of that night. And this deponent abſolutely denies that the ſaid Charles Bourne, at the time that he came into the ſaid Sir James Wallace's cabin, or during any part of the time that he was there, repeated to the ſaid Sir James Wallace any meſſage from the gentlemen of the ward-room, with their reſpective compliments, or any other meſſage whatſoever from them, or made any other anſwer or reply to the ſaid Sir James Wallace, or that the ſaid Sir James Wallace aſked any other queſtion of, or made any other reply, to the ſaid Charles Bourne than as is herein before mentioned, according to the beſt of this deponent's recollection and belief. And this deponent ſaith, that Mr. Stephenſon, who ſucceeded the ſaid Mr. Markett, as ſecond lieutenant of the ſaid ſhip, during the whole time that this deponent was on board the ſaid ſhip, behaved himſelf as a very ſober, regu-

lar, and good officer, and was not in the leaſt addicted to drinking, or habits of intoxication, and that this deponent never heard, or does he know or believe that the ſaid Mr. Stephenſon the next morning requeſted the gentlemen of the ward-robe to attend, while he declared his concern for his behaviour the preceding evening to the ſaid Charles Bourne, or that the ſaid Mr. Stephenſon then declared that he was drunk, and ſorry for what had happened, and entreated the ſaid Charles Bourne's pardon and forgiveneſs; for this deponent ſaith, that if any ſuch thing had ever happened on board the ſaid ſhip, this deponent muſt have either ſeen or heard of the ſame. And this deponent ſaith, that the next day, as this deponent was walking on the ſtarboard ſide of the quarter-deck with the defendant Bourne and ſome other officers of the ſaid ſhip, Sir James Wallace was walking at the ſame time alone, on the larboard ſide of the deck, and the ſaid Charles Bourne left this deponent and croſſed over to the larboard ſide of the deck, and throwing his arms about in a ſwaggering, geſturing manner, paſſed the ſaid Sir James Wallace once or twice in that manner, ſwinging his arms about, and that the ſaid Sir James Wallace ſtepped aſide on the midſhip grating, and called to this deponent and ſaid, Mr. Spry, my orders are, that Mr. Bourne does not walk with me, or words to that effect, and thereupon turned away from the ſaid Charles Bourne. And this deponent ſaith, that ſome time afterward, on the ſame day, whilſt the ſaid Sir James Wallace was upon the ſtarboard ſide of the quarter-deck, the ſaid Charles Bourne went up to him there, and aſked him if he meant to turn him off the deck, or confine him; to which the ſaid Sir James Wallace anſwered him no, but that after having treated him with ſo much diſreſpect he did not chuſe that he ſhould walk with him, or words to that effect or purport, and which were all the words, according to the beſt of this deponent's recollection and belief, which paſſed between the ſaid Sir James Wallace and the ſaid Charles Bourne. And this deponent ſaith, that in or about ſix days afterwards the Warrior arrived at Jamaica. And this deponent poſitively ſaith, that he never ſaw or heard, nor doth he know, or in his conſcience believe, that the ſaid Sir James Wallace either then,

or

or at any other time, during the whole voyage of the ſaid ſhip the Warrior from England to Jamaica, ever came running out of his cabin on ſeeing the ſaid Charles Bourne on the quarter-deck with his fiſts clenched to the ſaid Charles Bourne's face, muttering the word ſcoundrel, or even with his fiſts clenched in any manner whatſoever, driving the ſaid Charles Bourne from ſide to ſide of the ſhip, as the ſaid Charles Bourne has moſt unjuſtly and untruly depoſed. And this deponent ſaith, that during the whole of the voyage of the ſaid ſhip the Warrior from England to Jamaica, this deponent never ſaw, nor did he ever hear, nor doth he know or believe, that the ſaid Sir James Wallace ever made uſe of any abuſive, inſulting, or uncivil language, to the ſaid Charles Bourne, or ever treated the ſaid Charles Bourne ill, in any reſpect whatſoever, or that the ſaid Charles Bourne ever experienced from the ſaid Sir James Wallace any inſtances of inſult, outrage, abuſe or unofficerlike behaviour. And this deponent ſaith, that if any ſuch thing had ever happened on board the ſhip, this deponent muſt have either ſeen or heard of the ſame, as he verily believes.

SPRY.

Sworn at my chambers in Serjeant's-Inn, July 1, 1783.

E. WILLES.

AFFIDAVIT of WILLIAM VARLO, Eſq. No. IV.

WILLIAM VARLO, of Portſmouth, in the county of Hants, Eſq. a major in his Majeſty's marine forces, maketh oath and ſaith, that he, this deponent, was the commanding officer of the marines, embarked on board his Majeſty's ſhip the Warrior, under the command of Sir James Wallace, and that the defendant, Charles Bourne, was the firſt lieutenant of the ſaid marines, under this deponent's command. And this deponent ſaith, that the ſaid ſhip the Warrior ſailed from Portſmouth on or

about the eleventh of January, one thouſand ſeven hundred and eighty-two, on her voyage to the Weſt Indies; and in the courſe of ſuch voyage touched at Madeira, on or about the firſt of February following, and that whilſt the ſaid ſhip was lying in the road of Madeira, the ſaid Sir James Wallace, on his going aſhore, left orders with Mr. Spry, his firſt lieutenant, that the officers belonging to the ſhip might go aſhore in the day-time, but that they were to return, and ſleep on board every night. And this deponent ſaith, that the ſaid Charles Bourne dined with the ſaid Sir James Wallace, at the Britiſh conſul's at Madeira, one day during their ſtay there, and that the ſaid Sir James Wallace gave the ſaid Mr. Bourne leave to ſleep on ſhore that night, but that the ſaid Charles Bourne did not return to the ſhip the night following, but continued on ſhore two nights; and after he returned to the ſhip, ſent a note, or letter, to the ſaid Sir James Wallace, thanking him for his polite introduction of him to the governor of Madeira, and inſinuating that he was indebted to him for all the civilities which he had received, and the polite treatment that he had experienced from the inhabitants whilſt he was on ſhore. And this deponent ſaith, that the ſaid Sir James Wallace ſhewed the ſaid note or letter to this deponent, and aſked this deponent what he thought of the ſaid letter, and in what light this deponent conſidered the ſame, when this deponent expreſſed his ſurprize at the ſaid letter, and knowing that the ſaid Sir James Wallace had not introduced the ſaid Charles Bourne to the governor of Madeira, this deponent told the ſaid Sir James Wallace, that he, this deponent, could not conſider the ſaid letter in any other light, than as an intended inſult. And this deponent ſaith, that the day after ſaid ſhip ſailed from Madeira, the ſaid Sir James Wallace ſent for the ſaid Charles Bourne into his cabin, and in the preſence of this deponent and Mr. Spry, ſhewed the ſaid Charles Bourne the ſaid letter, and aſked him if he had ſent the ſaid letter to the ſaid Sir James Wallace, and in what light he, the ſaid Sir James Wallace, was to conſider the ſame, and whether it was meant as an inſult: And this deponent ſaith, that the ſaid Charles Bourne thereupon told the ſaid Sir James Wallace, that the ſaid

Charles

Charles Bourne imputed all the bad uſage which he had received from the inhabitants whilſt on ſhore, ſo the inattention of the ſaid Sir James Wallace towards the ſaid Charles Bourne, and his not introducing him to the Portugueſe governor as a Britiſh officer; upon which the ſaid Sir James Wallace told the ſaid Charles Bourne, that if he thought ſo, he, the ſaid Sir James Wallace from that, could be no longer acquainted with him, the ſaid Charles Bourne. And this deponent further ſaith, that after the engagement of the twelfth of April, between the Engliſh and French fleets, the Warrior ſailed with Lord Hood's ſquadron for Jamaica, but ſeparated from the ſaid ſquadron on or about the twenty-firſt of April, and did not join it again until they arrived at Jamaica. And this deponent ſaith, that on or about the twenty-fourth or twenty-fifth of April, whilſt this deponent was ſitting with Sir James Wallace and Mr. Spry, his firſt lieutenant, in the cabin, between ten and eleven o'clock at night, they heard a very great noiſe in the ward-room, and one of the ſervants belonging to the ward-room, brought up a meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, to know if the ſaid Sir James Wallace had ordered the ward-room lights to be put out, upon which, the ſaid Sir James Wallace told Mr. Spry to go down into the ward-room and enquire what was the matter. And this deponent ſaith, that the ſaid Mr. Spry accordingly went down into the ward room, and ſoon afterwards returned, and told the ſaid Sir James Wallace, that the ſaid Charles Bourne had been making a very great noiſe in the ward-room, and that Mr. Stephenſon, the ſecond lieutenant, who was then in bed, and was to turn out to keep the middle watch, had deſired the ſaid Charles Bourne not to make ſo much noiſe, as it prevented him, the ſaid Mr. Stephenſon, from ſleeping; and that the ſaid Charles Bourne having taken no notice of the ſaid Mr. Stephenſon's requeſt, the ſaid Mr. Stephenſon had ordered the ward-room lights to be put out, which had occaſioned very high words and bad language between the ſaid Mr. Bourne and Mr. Stephenſon, and that they had challenged each other, when the ſaid Mr. Bourne ſent up the ſaid meſſage to the ſaid Sir James Wallace. And this deponent ſaith, that the ſaid Sir James

James Wallace thereupon ordered one of his ſervants to go down into the wardroom and deſire the ſaid Charles Bourne to come up to him in the cabin; and that the ſaid Mr. Bourne accordingly came up into the cabin, when the ſaid Sir James Wallace aſked him before this deponent and the ſaid Mr. Spry, how he, the ſaid Charles Bourne, could ſend up a meſſage to the ſaid Sir James Wallace, to know if he had ordered the ward-room lights to be put out, when he, the ſaid Charles Bourne, knew that the ſaid Sir James Wallace had not given any ſuch orders, and that the ſaid Sir James Wallace deſired to know what the ſaid Charles Bourne meant by ſending up to him ſuch a meſſage, when the ſaid Charles Bourne told the ſaid Sir James Wallace, that he, the ſaid Charles Bourne, thought that the ſaid Sir James Wallace had given ſuch orders, or that the ſaid Mr. Stephenſon would not have done it; upon which the ſaid Sir James Wallace told the ſaid Charles Bourne, that he was a very troubleſome man. And this deponent ſaith, that the ſaid Sir James Wallace made uſe of no other words or language to the ſaid Charles Bourne; and the ſaid Charles Bourne thereupon went out of the cabin, muttering ſomething to himſelf. And this deponent ſaith, that in the evening of the next day, the ſaid Charles Bourne ſent a meſſage to this deponent, deſiring to ſpeak with this deponent in the ward-room, and that on this deponent's going down into the ward-room, the ſaid Charles Bourne told this deponent, that the ſaid Sir James Wallace has ordered that he the ſaid Charles Bourne ſhould not walk on the ſame ſide of the quarter-deck with him, the ſaid Sir James Wallace, and that he, the ſaid Charles Bourne, then conſidered himſelf a priſoner, upon which this deponent told the ſaid Charles Bourne, that he, this deponent, could not poſſibly conſider, or look upon him in that light, and adviſed him on no account whatſoever to refuſe any duty, or diſobey any orders that might be given him. And this deponent ſaith, that the ſaid Charles Bourne never made any complaint to this deponent of the ſaid Sir James Wallace having treated him with any inſolence or abuſe, or in any other manner than ordering

that

that he, the ſaid Charles Bourne, ſhould not walk on the ſame ſide the quarter-deck with the ſaid Sir James Wallace. And this deponent ſaith, that he doth not believe that the ſaid Charles Bourne after ſuch converſation between him and this deponent as aforeſaid, any longer conſidered himſelf a priſoner, or under any reſtraint, in conſequence of the ſaid order of the ſaid Sir James Wallace; for this deponent ſaith, that on Sunday the twenty-eighth of April. the ſaid ſhip the Warrior, between eleven and twelve o'clock at night, diſcovered a Spaniſh ſchooner, which ſhe gave chace to, came up with, and took, and that they ſoon afterwards, the ſame night, diſcovered a man of war, which they took for a French ſhip, and gave chaſe to, and that the marines were thereupon ordered to quarters, and that the ſaid Mr. Bourne was then at his quarters, and upon their coming up with the ſaid ſhip, they diſcovered her to be his Majeſty's ſhip the Sybil, commanded by Captain Rodney. And this deponent ſaith, his Majeſty's ſhip the Warrior arrived at Jamaica, on or about the thirtieth of April, and ſoon afterwards the ſaid Charles Bourne was ordered by Lord Rodney, from on board the Warrior to the command of the marines on board Le Hector, one of the French prizes, taken by Lord Rodney's fleet, in the engagement of the twelfth of April. And this deponent ſaith, that as he, this deponent, was walking with Sir James Wallace in the ſtreet at Port-Royal, in Jamaica, in the duſk of the evening, of the fifteenth of May, one thouſand ſeven hundred and eighty-two, the ſaid Charles Bourne came up to them, and addreſſing himſelf to the ſaid Sir James Wallace ſaid, I ſhall be glad to ſpeak to you, Sir James, to which Sir James Wallace made anſwer, I have nothing to ſay to you in private, if you have any thing to ſay to me, ſay it before this gentleman, pointing to this deponent, ſpeak that captain Varlo may hear, or words to that effect. And this deponent ſaith, that the ſaid Charles Bourne thereupon turned away from them, the ſaid Sir James Wallace and this deponent, ſaying, It's very well; very well; or words to that effect. And this deponent ſaith, that during the whole time that the ſaid Charles Bourne was on board the ſaid ſhip the Warrior, under the command of the ſaid

ſaid Sir James Wallace, this deponent never ſaw, nor heard, nor doth he believe, that the ſaid Sir James Wallace did ever treat the ſaid Charles Bourne with any inſolence or abuſe, and that the ſaid Charles Bourne never made any complaint to this deponent, or inſinuated to this deponent, that the ſaid Sir James Wallace had even treated him with any kind of inſolence or abuſe, or made uſe of any abuſive or improper language to him, or treated him ill in any manner whatſoever, except his not having introduced him to the governor of Madeira, which this deponent always informed the ſaid Charles Bourne that he had no right to complain of, as none of the other officers belonging to the ſaid ſhip had been introduced to the ſaid governor, by the ſaid Sir James Wallace. And this deponent ſaith, that if the ſaid Charles Bourne had ever made any complaint, or repreſentation to this deponent, of the ſaid Sir James Wallace having treated him, the ſaid Charles Bourne, with any kind of inſolence. or abuſe, or otherwiſe in an improper manner, whilſt he was on board the ſaid ſhip, under the command of the ſaid Sir James Wallace, he, this deponent, as the commanding officer of the ſaid Charles Bourne, would have given the ſaid Charles Bourne, all the protection and aſſiſtance in the power of this deponent, againſt any ſuch inſult or abuſe, as well as in obtaining juſtice to be done to the ſaid Charles Bourne in reſpect thereof.

WILLIAM VARLO.

Sworn at my houſe in
Lincoln's-Inn Fields,
June 7, 1783.

F. BULLER.

* Not wiſhing to leave on record in a court of law, a circumſtance reflecting diſgrace on any perſon of the corps I have the honor to belong to, I ſuppreſſed affidavits that would have invalidated the principal facts ſworn to by Major Varlo.

AFFIDAVIT of WILLIAM VARLO, Esq. No. V.

WILLIAM VARLO, of Portsmouth, in the county of Hants, Esq. a major in the Portsmouth division of marines, maketh oath and saith, that he was present in Sir James Wallace's cabin, on board his Majesty's ship the Warrior, in the month of February, one thousand seven hundred and eighty-two, at the time mentioned and alluded to by Augustus Markett, late the third lieutenant of the said ship, in his affidavit made in this cause, on the eighteenth day of this instant, and that there were also present at the same time, the said Sir James Wallace, Mr. Spry, the first lieutenant of the said ship, the said Augustus Markett, and the defendant Charles Bourne, and no other officers or persons belonging to the said ship, according to the best of this deponent's recollection and belief; and this deponent absolutely denies that the said Sir James Wallace then put the following question to the said Charles Bourne, viz. "Why, if you thought yourself aggrieved or affronted, did you not call me out;" or that the said Sir James Wallace, to the best of this deponent's recollection and belief, then made use of any words to any other purport or effect than as is mentioned and set forth in the affidavit already made in this cause, by the deponent, on the seventh day of June instant. And this deponent further saith, that he never saw, nor did the said Charles Bourne ever make any complaint whatsoever to this deponent, as his commanding officer, nor did this deponent ever hear from any other person on board the said ship the Warrior, nor does he know or believe, that the said Charles Bourne, during the voyage of the said ship the Warrior, from England to Jamaica, experienced from the said Sir James Wallace any instances of insult, outrage, and un-officerlike behaviour, or that the said Sir James Wallace, on observing the said Charles Bourne walking on the quarter-deck, did ever go out of his cabin, with his fists clinched in a menacing and provoking manner, or in any other manner, driving the said Charles Bourne from side to side of the said ship.

And this deponent ſaith, that if ever the ſaid Sir James Wallace had treated the ſaid Charles Bourne in any ſuch manner, this deponent muſt have heard of the ſame, and this deponent ſhould and would have conſidered the ſaid Charles Bourne immediately under, and intitled to the protection of this deponent, and that it would have been incumbent upon this deponent to have taken notice, and that this deponent would have taken notice of the ſame, and endeavoured all in his power to have obtained redreſs for the ſaid Charles Bourne. And this deponent further ſaith, that all the time of the quarrel between the ſaid Charles Bourne and Mr. Stephenſon, and the ſaid Charles Bourne's ſending up a meſſage to the ſaid Sir James Wallace, to know if he had ordered the ward-room lights to be put out, and at the reſpective times that the ſaid Sir James Wallace then ſent for the ſaid Charles Bourne, and that the ſaid Charles Bourne then came into his cabin, as mentioned in this deponent's former affidavit, made in this cauſe as aforeſaid, no other perſon or perſons, was or were then ſitting with the ſaid Sir James Wallace in his cabin, except this deponent and the ſaid Mr. Spry, and that neither the maſter nor the ſurgeon of the ſaid ſhip, or either of them were then, or ever had been, there that evening, for this deponent ſaith, that the maſter of the ſaid ſhip had loſt his leg in the engagement on the twelfth of April, which was not a fortnight before that time, and was then confined to his bed, in a cabin in the gun-room*, and that neither the ſurgeon of the ſhip, nor Mr. Stephenſon, the ſecond lieutenant, or either of them, had ever been in the ſaid Sir James Wallace's cabin during the whole of that night. And this deponent abſolutely denies that the ſaid Charles Bourne then repeated any meſſage from the gentlemen of the ward-room, with their reſpectful compliments, or that the ſaid Sir James Wallace then deſired the ſaid Charles Bourne to get away, or ſaid that he, the ſaid Sir James Wallace, would ſay nothing to him, the ſaid Charles Bourne, at that time, but that he, the ſaid ir James Wallace, would take another opportunity that the ſaid Charles Bourne ſhould hear from him, or that the ſaid Charles Bourne then replied to the ſaid Sir James Wallace, that he ſhould be happy in the honour at any

* See this evaſion laid open in the note to Ferris's affidavit.

any time, to hear what the ſaid Sir James Wallace had to ſay, or that the ſaid Sir James Wallace and Charles Bourne, or either of them made uſe of any words to any other purport or effect, than as mentioned and ſet forth in this deponent's ſaid former affidavit, already made in this cauſe. And this deponent ſaith, that the next day, when the ſaid Charles Bourne ſent to this deponent into the ward-room, and told this deponent that the ſaid Sir James Wallace had ordered that the ſaid Charles Bourne ſhould not walk on the ſame ſide of the quarter-deck with him, the ſaid Charles Bourne never ſaid, or intimated to this deponent, that he, the ſaid Charles Bourne ever, in any manner remonſtrated with, or made any reply to the ſaid Sir James Wallace, on his giving ſuch order, or deſired the ſaid Sir James Wallace to confine him in a regular manner, that he might have an opportunity of clearing himſelf, but only ſaid that he conſidered himſelf a priſoner, which this deponent then convinced him he had no reaſon, and ought not to do. And this deponent ſaith, that they were not at ſea for two or three weeks after that time, for that the ſame happened on the twenty-fifth of April, one thouſand ſeven hundred and eighty-two, and they arrived at Jamaica, on the thirtieth of the ſame month, according to the beſt of this deponent's recollection and belief, as to the time.

WILLIAM VARLO.

Sworn in Court,
June 25, 1783.

By the Court.

AFFIDAVIT of EDMUND EARL of CORK and ORRERY, No. VI.

EDMUND Earl of CORK and ORRERY in the kingdom of Ireland, and Lord Boyle, Baron of Marſton in the kingdom of Great Britain, maketh oath and

 ſaith

* See the affidavits of Captains Deſborough and Hamilton, which contradict the material facts ſworn to by the noble earl, Appendix p. 16.

ſaith, that he knew and had ſome acquaintance with the ſaid Charles Bourne before he embarked in the year 1781 as an officer of marines on board his majeſty's ſhip the Warrior, and that ſome time in the beginning of December laſt the ſaid Charles Bourne called upon this deponent, who was then in London, and repreſented to this deponent, that he, the ſaid Charles Bourne, had been very ill treated by Sir James Wallace during the time that he was under his command, on board his Majeſty's ſaid ſhip the Warrior, and that he had repeatedly publickly inſulted him, and treated him with the moſt foul and abuſive language, and that he, the ſaid Charles Bourne, was then going to Bath, to demand ſatisfaction of the ſaid Sir James Wallace for the ſame; and this deponent then giving credit to what the ſaid Charles Bourne ſo related to this deponent, expreſſed much concern for his ſituation, and told him that this deponent wiſhed that it was then in his, deponent's power, to go to Bath, as this deponent had reaſon to hope that he might be able to make up the difference between him and the ſaid Sir James Wallace, but that this deponent could not then poſſibly go with him, and that if he could have gone, he did not mean to go as his ſecond, but as a mediator and friend to both; and this deponent particularly adviſed and recommended to the ſaid Charles Bourne to conduct himſelf with coolneſs and diſcretion, and get ſome friend that he could depend upon to go with him. And this deponent ſaith, that upon the ſaid Charles Bourne's return from Bath to London, he again waited upon this deponent, and informed this deponent that he had ſent ſeveral meſſages to the ſaid Sir James Wallace, by one of the waiters belonging to the White-hart Inn, and had alſo written to him, but could not obtain an interview with him, and that he had met him in the ſtreet, and caned him, or ſtruck him with his cane, and was determined immediately to publiſh two letters, which he told this deponent he had ſent to Sir James Wallace at Bath, and then gave this deponent to read; and this deponent then told the ſaid Charles Bourne that this deponent could by no means approve of the ſaid Charles Bourne's conduct towards the ſaid Sir J. Wallace at Bath, and adviſed him by no means to publiſh

liſh the ſaid letters, or put any thing in the news-papers relating thereto. And this deponent ſaith, that he ſome time afterwards, on the ſame day, called upon Mr. Sleigh, a relation of the ſaid Sir James Wallace, and informed him of what the ſaid Charles Bourne had ſo told this deponent, and that the ſaid Charles Bourne had declared to this deponent that he would publiſh the ſaid letters, and that this deponent had adviſed him by no means to do it.* But this deponent ſaith, that he did not mean thereby to convey any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, nor ever conſidered the ſaid Mr. Sleigh as a third perſon between this deponent and the ſaid Sir James Wallace.* And this deponent ſaith, that the ſaid Mr. Sleigh then told this deponent, that he did not know that the ſaid Sir James Wallace was then returned from Bath, but was certain that he was not come to his houſe in London, that he might have ſtopped at his houſe at Hanworth, and that he, the ſaid Mr. Sleigh, would go to Hanworth that afternoon to ſee if he was come thither. And this deponent ſaith, that about two days afterwards he had a converſation with the ſaid Mr. Sleigh, on the ſaid difference between the ſaid Charles Bourne and Sir James Wallace, when the ſaid Mr. Sleigh told this deponent, that he had ſeen the ſaid Sir James, who was then in town, and that the conduct and behaviour of the ſaid Charles Bourne, towards the ſaid Sir James Wallace at Bath was widely different from what the ſaid Charles Bourne had before related to this deponent, and that the ſaid Sir James Wallace intended to lay a ſtate of the ſaid Charles Bourne's proceedings before the Lords of the Admiralty. And this deponent then told the ſaid Mr. Sleigh, that if any thing in this deponent's power could effect a reconciliation between the ſaid Charles Bourne and Sir James Wallace it would give this deponent the greateſt happineſs;

* How are we to account for the officious conduct of this noble lord? If he did not call on Mr. Sleigh, as the friend of Mr. Bourne, for the purpoſe of delivering a meſſage to Sir James Wallace, for what purpoſe did he call? Can it be ſuppoſed that the Earl of Cork would ſo far degenerate from the dignity of his ſtation, as to betray the private converſation of a gentleman confiding in his honour, to the attorney of his opponent—Yet if he did not go as a friend, he muſt have gone as an enemy, for the purpoſe of furniſhing evidence to Sir James Wallace!

neſs; and this deponent afterwards expreſſed himſelf to the ſame effect to the ſaid Charles Bourne, and told him what the ſaid Mr. Sleigh had ſo ſaid to this deponent. And this deponent ſaith, that his only motive and inducement for interfering in the ſaid buſineſs was out of friendſhip* to the ſaid Charles Bourne, and with a view of preventing him from doing any act that might tend to his diſadvantage, and that this deponent never took any other part in the ſaid buſineſs than that of a mediator and friend to both parties, in hopes of making up the difference between them in an amicable manner, and which this deponent conſtantly declared to every perſon with whom he about that time had converſation about the ſame. And this deponent ſaith, that whatever declarations the ſaid Charles Bourne may have made of this deponent's having undertaken any other or different part in the ſaid diſpute, he had no cauſe or authority for ſo doing, and never made ſuch declaration in the preſence of this deponent, and that if any concluſion hath ever been drawn from any converſation that this deponent ever had with the ſaid Charles Bourne, in the preſence of any other perſon or perſons, on the ſubject of the ſaid diſpute, that this deponent had undertaken to carry any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, and to go out with him as his ſecond, ſuch concluſion could not be fairly drawn immediately from any thing that this deponent then ſaid, but muſt have been derived from ſome antecedent miſrepreſentation of the matter, by the ſaid Charles Bourne, at a time when this deponent was not preſent to hear and explain the ſame. And this deponent ſaith, that he was afterwards

* Here the noble lord declares that friendſhip was his motive; that his wiſh was to promote a reconciliation, that he intended to be a mediator. But does the noble lord evince thoſe motives, wiſhes, and intentions, when, as appears by the firſt part of his affidavits, he divulged the whole of the converſation between him and Mr. Bourne to Mr. Sleigh; or rather, indeed, that he communicated a converſation to Mr. Sleigh, great part of which never paſſed between them. Was it the act of friendſhip?—Does it look like a wiſh to reconcile?—Does it ſhew the intention of a mediator, for a man to urge every circumſtance that could irritate?—The illuſtration is upon the face of the affidavit, Lord Cork is now obliged to ſwear to the converſation he had with Mr. Sleigh; but compare his lordſhip's affidavit with the joint affidavits of Captains Deſborough and Hamilton, men of the ſtricteſt truth, character, *probity, and honour.*

wards informed that the ſaid Charles Bourne had publiſhed a letter in the Morning Herald of the twenty-third of December laſt, wherein he aſſerted that a nobleman did him the honor of calling on the ſaid Sir James Wallace to inform him that he, the ſaid Charles Bourne, was in town, and to know his, the ſaid Sir James Wallace's, determination, but could not ſee him, and that the ſaid Charles Bourne had declared, and that it was publickly reported, that this deponent was the nobleman meant and alluded to by the ſaid letter, and that this deponent had waited upon the ſaid Sir James Wallace with a challenge from the ſaid Charles Bourne, and had offered to go out with the ſaid Charles Bourne, as his ſecond. And this deponent ſaith, that he was at that time at his houſe at Marſton in the county of Somerſet, from whence he returned to London about the eighth day of January laſt, and that a few days afterwards this deponent had an interview with the ſaid Charles Bourne by this deponent's appointment, in the preſence of Captain Cruickſhanks, of the thirty-ſixth regiment of foot,* to receive an explanation from the ſaid Charles Bourne of the meaning of his ſaid letter and report, when the ſaid Charles Bourne acknowledged to this deponent, that this deponent was the nobleman meant and alluded to by him in the ſaid letter, and that he had reported that this deponent had waited upon the ſaid Sir James Wallace with a challenge from him, and had offered to go out with him as his ſecond, upon which this deponent aſked the ſaid Charles Bourne, what he could mean thereby, as he, the ſaid Charles Bourne, well knew that this deponent had never waited, or called upon the ſaid Sir James Wallace with any meſſage whatſoever, from him the ſaid Charles Bourne. And this deponent ſaith, that the ſaid Charles Bourne thereupon

* Captain Cruickſkank's is now in the Eaſt Indies, which deprives Mr. Bourne of the benefit of his teſtimony; but ſee Mr. Bourne's laſt affidavit, where he poſitively ſwears he never made an apology to Lord Cork. It is preſumed that Lord Cork muſt have forgotten that the defendant, on being informed that letters from his lordſhip to Mr. Sleigh, condemning Mr. Bourne's conduct, had been read at the navy, wrote to his lordſhip, ſignifying that if any ſuch letters had been read, they muſt have been forged; for that lord Cork, who volunteered the honor of his ſervices to defendant, in caſe Sir James Wallace would have gone into the field, could not poſſibly have been the author of productions ſo inconſiſtent and fallacious.

thereupon made an apology to this deponent for his having made ſuch uſe of this deponent's name. And this deponent further ſaith, that he, this deponent, never did undertake to wait or call upon the ſaid Sir James Wallace, with any meſſage, or to carry any meſſage whatſoever to him from the ſaid Charles Bourne, and that this deponent never did, directly or indirectly, wait or call upon the ſaid Sir James Wallace, with any meſſage, or carry any meſſage to him, from the ſaid Charles Bourne; and that this deponent never had any thought or intention of ſo doing. And this deponent ſaith, that whenever this deponent hath called upon the ſaid Sir James Wallace, or at his houſe, which this deponent hath done before and ſince the diſpute now ſubſiſting had ariſen between the ſaid Charles Bourne and the ſaid Sir James Wallace, this deponent always did the ſame as a viſit of friendſhip, between one gentleman and another, and not with any reference whatſoever to any ſuch diſpute between the ſaid Charles Bourne and the ſaid Sir James Wallace.

CORK and ORRERY.

Sworn in Lower-ſtreet.
the 27th day of June, 1783,
before
J. N. NEWLAND, (by Commiſſion.)

AFFIDAVIT of WILLIAM DAVIS, No. VII.

WILIAM DAVIS, of Priſton, in the county of Somerſet, Eſq. (Agent Victualler of Gibraltar) maketh oath and ſaith, that on or about the ſeventh day of December laſt, according to the beſt of this deponent's recollection as to the time, as this deponent was coming out of a houſe at the north end of Milſom-ſtreet in Bath, Captain John Webber of the marines, was paſſing by, and ſaid to this deponent, that if this deponent was going down the ſtreet he would ſee Sir James Wallace get a thraſhing, or a beating, to which this deponent replied, that if he, this deponent, knew Sir James Wallace well, he would not ſuffer himſelf to be beaten by any man, but the

the ſaid Captain Webber ſaid, well, you will ſee, and taking hold of this deponent's arm, croſſed the ſtreet; and after they had walked a very little way down, this deponent ſaw Sir James Wallace coming up on the oppoſite ſide of the ſtreet, and ſaid to Captain Webber, there is Sir James Wallace, and Captain Webber ſaid, yes, and there is the other, pointing to a gentleman who was then going up to the ſaid Sir James Wallace, and who the ſaid Captain Webber told this deponent was Mr. Bourne of the marines, meaning the defendant in this cauſe, as the deponent believes. And this deponent ſaith, that when the ſaid Charles Bourne was within three or four paces of the ſaid Sir James Wallace, this deponent ſaw the ſaid Sir James Wallace take a ſmall piſtol out of his pocket, which he held in his hand, and the ſaid Charles Bourne had a ſtick in his hand, and that ſome words then paſſed between them, but this deponent was not near enough to hear the purport of their converſation. And this deponent ſaith, that the ſaid Charles Bourne never ſtruck, or attempted to ſtrike, the ſaid Sir James Wallace with his ſtick, nor did this deponent obſerve any blows or threats of blows, from either of them to the other. * And this deponent ſaith, that he never quitted ſight of them from the time this deponent firſt ſaw the ſaid Sir James Wallace to the time of the ſaid Charles Bourne's meeting the ſaid Sir James Wallace, and afterwards parted from him, when the ſaid Sir James Wallace walked up the ſtreet, and the ſaid Charles Bourne came acroſs the ſtreet to the ſaid Captain Webber; and this deponent and the ſaid Charles Bourne ſaid to the ſaid Captain Webber, had I ſtruck him (meaning the ſaid Sir James Wallace) he would have ſhot me, he had a piſtol in his hand, and I ſhould have been imprudent if I had, but I will go home and be prepared, and I will be with him again immediately, or words to that effect. And the ſaid Charles Bourne then left the ſaid Captain Webber and this deponent and walked away.

Sworn at Serjeants Inn, WILL. DAVIES.
the 20th day of June,
1783, *before me,*
W. H. ASHURST.

AFFI-

* See the whole of Captain Webber's affidavit, Appendix, p. 13.

AFFIDAVIT of ROBERT FARRIS, No. VIII.

ROBERT FARRIS, of Ramſgate, in the county of Kent, Gentleman, a Lieutenant* in his majeſty's royal navy, maketh oath and ſaith, that he was an officer belonging to and on board his majeſty's ſhip called the Warrior, under the command of Sir James Wallace, from the time of the ſaid ſhip's ſailing on her voyage to the Weſt Indies, in the begining of the year 1782, until the time that the ſaid Sir James Wallace quitted the ſaid ſhip at Jamaica, ſome time in the beginning of July, 1782, on his being appointed to the command of his majeſty's ſhip the Reſolution, and this deponent ſaith, that the defendant, Charles Bourne, was a Lieutenant of marines, embarked on board the ſaid ſhip, the Warrior, and on board the ſaid ſhip at the time that the ſaid ſhip ſailed from Portſmouth, as aforeſaid, and that the ſaid Charles Bourne continued on board the ſaid ſhip as a Lieutenant of marines, until a ſhort time after the engagement of the twelfth of April, 1782, between his majeſty's fleet under the command of Lord Rodney, and the French fleet, under the command of the Count de Graſſe, when the ſaid Charles Bourne was ordered from the Warrior to go on board the Hector, one of the French ſhips captured in the ſaid engagement, and this deponent ſaith, that the ſeveral officers of and belonging to the ſaid ſhip called the Warrior, before, and at the time that the ſaid Charles Bourne embarked on board the ſaid ſhip, meſſed and lived together on board the ſaid ſhip in great friendſhip and cordiality, and that after the ſaid Charles Bourne had been ſome little time on board the ſaid ſhip, he began to create diſſentions and form parties among the ſaid officers, and entered into diſputes and quarrels with ſome of the ſaid officers, and did not behave or conduct himſelf with that good order and diſcipline which officers on

* Of his own creating, for the ſuppoſed purpoſe of giving weight to his affidavit.

on board his majeſty's ſhips are accuſtomed to;* and this deponent ſaith, that the ſaid ſhip the Warrior on her voyage to the Weſt Indies touched at the iſland of Madeira, and that whilſt ſhe lay off the ſaid iſland the ſaid Sir James Wallace gave leave to the officers belonging to the ſaid ſhip to go aſhore in the day time, but ordered them to return to and keep on board the ſaid ſhip every night, as the combined fleets of France and Spain were then at ſea, and there was a poſſibility of ſome of the cruiſing ſhips belonging to that fleet coming in upon them there in the night; and this deponent ſaith, that the ſaid Charles Bourne went aſhore with ſeveral other officers belonging to the ſaid ſhip, but that the ſaid Charles Bourne did not return to the ſhip with the other officers, but continued a-ſhore there two whole nights, contrary to the orders of the ſaid Sir James Wallace, and behaved in a very diſorderly manner whilſt he was ſo on ſhore;* and that after his return to the ſhip he wrote and ſent a note or letter to the ſaid Sir James Wallace, thanking him for his polite introduction of the ſaid Charles Bourne to the Governor of Madeira, and inſinuating that he was indebted to the ſaid Sir James Wallace for the civilities he had received, and the polite treatment he had experienced from the inhabitants there while he was on ſhore, alluding, as this deponent believes, to his, the ſaid Charles Bourne's having been turned, or obliged to go out of the theatre, for his improper behaviour there, as this deponent hath heard and believed; and this deponent further ſaith, that the ſaid Charles Bourne afterwards, between ten and eleven o'clock, in the night of the 24th or 25th of April, according to the beſt of this deponent's recollection and belief, as to the time whilſt the ſaid ſhip the Warrior was on her voyage to Jamaica, quarrelled very much with Mr. Stephenſon the ſecond Lieutenant of the ſaid ſhip, and who, as this deponent believes, is now on board the ſaid ſhip in the Weſt Indies, and which quar-

* Mr. Farris ſpeaks with an extraordinary degree of confidence of what he muſt be little better than a ſtranger to, his ſituation in the Orlop precluding him from almoſt every means of forming an opinion on the conduct of gentlemen in the ward-room.

* See the affidavits of Lieutenant Markett, Monke, &c.

rel was began and occaſioned by the ſaid Charles Bourne's making a very great noiſe in the ward-room, which prevented the ſaid Mr. Stephenſon, who was then in bed, and was to turn out to keep the middle watch, from ſleeping; and this deponent ſaith, that the ſaid Mr. Stephenſon ſeveral times deſired the ſaid Charles Bourne not to make ſo great a noiſe, for that it was impoſſible for him to ſleep, but that the ſaid Charles Bourne, diſregarding ſuch requeſts, continued to make the ſame or a greater noiſe, and that the ſaid Mr. Stephenſon, who was then the chief officer in the ward-room, ordered the ward-room lights to be put out, which was no ſooner done than the ſaid Charles Bourne began to make uſe of very groſs and abuſive language to the ſaid Mr. Stephenſon, and the ſaid quarrel was carried ſo far as to produce a challenge between them, and that the ſaid Charles Bourne, during ſuch quarrel, ordered one of the ſervants in the ward-room to go up to the Captain, meaning the ſaid Sir James Wallace, and aſk him if he had ordered the ward-room lights to be put out, though the ſaid Charles Bourne then very well knew that the ſaid lights had been put out by the order of the ſaid Mr. Stephenſon; and this deponent, ſaith that ſoon after the ſaid Charles Bourne had ſent up ſuch meſſage to the ſaid Sir James Wallace, Mr. Thomas Spry, the firſt Lieutenant of the Warrior, and who is now on board his majeſty's ſhip the Barfleur in the Weſt Indies, as this deponent believes, came down into the ward-room, and enquired into the cauſe of the noiſe and diſturbance which was made there, and what the ſaid Charles Bourne meant by the meſſage which he had ſent up to Sir James Wallace, about the putting out the ward-room lights, when the ſaid Mr. Stephenſon informed the ſaid Mr. Spry of all that had happened between him, the ſaid Mr. Stephenſon and the ſaid Charles Bourne, and that the ſaid Charles Bourne knew when he ſent up the ſaid meſſage to the ſaid Sir J. Wallace, that he, the ſaid Mr. Stephenſon, had ordered the ward-room lights to be put out; and this deponent further ſaith, that ſoon after the ſaid Mr. Spry had left the ward-room, one of the Captain's ſervants came down with a meſſage for Mr. Bourne to go up into the Captain's cabin, which he accordingly did, and ſoon afterwards

terwards returned again into the ward-room, when he kept walking up and down for ſome time, muttering and talking to himſelf. And this deponent further ſaith, that the next day, whilſt this deponent was walking on the quarter-deck, near the ſaid Sir James Wallace, the ſaid Charles Bourne came upon the ſame ſide of the quarter-deck, and in a ſwaggering way bruſhed paſt the ſaid Sir James Wallace, and ſtared in his face in a very daring and inſulting manner, upon which Sir James Wallace called to Mr. Spry, the firſt Lieutenant, who was then walking on the oppoſite ſide of the deck, and ſaid to him, Mr. Spry, My orders are that Mr. Bourne does not walk with me, or to that effect, and which were all, or the only words, according to the beſt of this deponent's recollection and belief, that were then ſpoken by the ſaid Sir James Wallace to the ſaid Charles Bourne, and that the ſaid Charles Bourne thereupon quitted the quarter-deck, and went down into the ward-room, as this deponent verily believes, and this deponent poſitively ſaith, that he doth not know or believe that the ſaid Sir James Wallace ever treated the ſaid Charles Bourne with any inſolence or abuſe during the whole time that he was under his command on board the ſaid ſhip the Warrior.

Sworn in Court, 2d June 1783. ROBERT FARRIS.

By the Court.

AFFIDAVIT of RALPH DUNDAS, Eſq. No. IX.

RALPH DUNDAS, of Arundel-ſtreet in the Strand, in the county of Middleſex, Eſquire, a Captain in his majeſty's navy, maketh oath and ſaith, that ſome time about the latter end of December laſt, this deponent having heard it reported in ſeveral places, and that it was become the ſubject of converſation in moſt of the Coffee Houſes in London, that the Right Honourable the Earl of Cork conveyed a challenge from the above-named defendant Charles Bourne to Sir James Wallace, and that

the

the ſaid Earl of Cork was to have gone out with him, the ſaid Charles Bourne, as his ſecond, and that Sir James Wallace had declined meeting him. And this deponent ſaith, that as he had very good reaſons to believe that the ſaid Earl of Cork had never waited upon the ſaid Sir James Wallace with any meſſage from the ſaid Charles Bourne, and well knew that if he had ſo done that the ſaid Sir James Wallace would not have declined meeting the ſaid Charles Bourne, this deponent thought it neceſſary that the ſaid Sir James Wallace ſhould be immediately informed of ſo falſe, ſcandalous, and injurious a report; and that on the forenoon of the twentieth day of December laſt, this deponent, in his way to the ſaid Sir James Wallace, to inform him of the ſaid report, met the ſaid Sir James Wallace in his carriage in the Strand, going into the city, when this deponent ſtopt the carriage, and informed the ſaid Sir James Wallace of the above report, who thereupon deſired this deponent to get into his, the ſaid Sir James Wallace's carriage, and accompany him to the ſaid Earl of Cork. And this deponent accordingly got into the ſaid carriage, which the ſaid Sir James Wallace ordered to drive immediately to his own houſe, in Pall-Mall, where they ſtopt; and the ſaid Sir James Wallace then drove with this deponent immediately to Lord Cork's in Lower Groſvenor-ſtreet. And this deponent ſaith, that on their inquiry for the ſaid Earl of Cork at his houſe in Lower Groſvenor-ſtreet, they were informed by the ſervant there that his lordſhip had that morning ſet out for his houſe at Marſton in Somerſetſhire. And this deponent ſaith, that upon his endeavouring to find out the author of the ſaid report, this deponent was informed that James Maden, Eſq. Clerk in the marines department of the Admiralty, had declared the ſame, upon which this deponent in company with Mr. William Sleigh of Whitehall, went on the twenty-firſt of December laſt to the ſaid Mr. Maden's houſe in New Bond-ſtreet, to know from the ſaid Mr. Maden his authority for having propagated ſuch a report; when the ſaid Mr. Maden informed this deponent and the ſaid Mr. Sleigh, that he, the ſaid Mr. Maden, would be very

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candid and explicit with them, and ſaid that the defendant, Charles Bourne, himſelf, had declared to him, the ſaid James Maden, that he the ſaid Charles Bourne had challenged the ſaid Sir James Wallace at Bath, but that he would not meet him, and that he had afterwards met the ſaid Sir James Wallace in the ſtreet there, and ſtruck him on the hat with his cane, and that on his the ſaid Charles Bourne's return to London, Lord Cork had waited upon the ſaid William Sleigh with a challenge or meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, and was to have gone out with the ſaid Charles Bourne, as his ſecond, or words to that effect; which declaration of the ſaid Charles Bourne, the ſaid William Sleigh then told the ſaid James Maden, was a moſt infamous falſhood, and that the ſaid Earl of Cork had never waited upon him the ſaid William Sleigh with any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace. And this deponent ſaith, that he hath been informed and believes, that the ſaid William Sleigh, by that night's poſt, by letter, informed the ſaid Earl of Cork, of the ſaid declaration and report, and that ſome letters paſſed between the ſaid Earl of Cork and the ſaid William Sleigh, diſavowing and denying the truth of the ſaid report, ſo far as the ſame related or alluded to him the ſaid Earl of Cork, and declared that he had never undertaken to carry any meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, either directly or indirectly, copies of which letters the ſaid Sir James Wallace afterwards delivered to this deponent. And this deponent ſaith, that in the courſe of a converſation between the ſaid Charles Bourne and this deponent, in the month of January laſt, upon the ſubject of the ſaid diſpute between the ſaid Sir James Wallace and the ſaid Charles Bourne, this deponent, at the requeſt of the ſaid Charles Bourne, gave the copies of the ſaid letters to him, who peruſed and afterwards returned the ſame to this deponent; and the ſaid Charles Bourne then told this deponent that he knew the ſaid Sir James Wallace to be a man of courage and reſolution, for that he had ſeen him in two actions, and did not apprehend that the ſaid Sir

James

James Wallace was afraid of him the ſaid Charles Bourne*.

Sworn in Court, 28*th* *June*, 1783. RALPH DUNDAS.

By the Court.

AFFIDAVIT of BENJAMIN MAITLAND, No. X.

BENJAMIN MAITLAND, Maſter's Mate, of and belonging to his Majeſty's ſhip the Warrior, maketh oath and ſaith, that he was an officer on board the ſaid ſhip at the time that ſhe ſailed from Portſmouth to the Weſt-Indies, under the command or Sir James Wallace in January 1782, and hath ever ſince been, and now is, an officer belonging to the ſaid ſhip. And this deponent ſaith, that the defendant Charles Bourne was the firſt lieutenant of marines, embarked on board the ſaid ſhip at the time of her ſailing from Portſmouth as aforeſaid, and that he continued on board the ſaid ſhip until after her arrival at Jamaica, when he was ordered from on board the Warrior to the Hector, one of the French prizes taken on the 12th of April 1782. And this deponent ſaith, that during the whole voyage of the ſaid ſhip the Warrior from England to Jamaica, and during all the time that the ſaid Charles Bourne continued on board, or belonged to the ſaid ſhip, this deponent never ſaw,

* Does this correſpond with the expreſſions contained in the letters written by Mr. Bourne to Sir James Wallace, ſtated in the information for the libel, and is it conſiſtent with common ſenſe to ſuppoſe, that Mr. Bourne having ſtigmatized Sir James Wallace, under his hand, in thoſe letters, as a coward, would in a converſation ſubſequent to that fact, and after Sir James Wallace refuſed to fight him, declare to a friend of Sir James Wallace that he *knew* him to be a man of courage and reſolution? Had Mr. Bourne entertained a good opinion of the proſecutor previous to his refuſing him the ſatisfaction of a gentleman, that refuſal would have been ſufficient to induce a firm belief that he merited the epithets applied to him. This is not the firſt lapſe of memory Captain Dundas has evinced reſpecting Mr. Bourne, when Mr. Bourne applied to him, in conſequence of ſome exceptionable expreſſions which he had dropped relative to him, perhaps in the unguarded moments of ebriety, he ſolemnly declared that in future he ſhould never ſpeak of Mr. Bourne but with the higheſt reſpect, and yet in a few evenings after he repeated his unwarrantable tranſgreſſion.

ſaw, nor did he ever hear, nor doth he know or believe, that the ſaid Sir James Wallace ever treated the ſaid Charles Bourne ill in any reſpect whatſoever, or ever made uſe of any abuſive, inſulting, or improper language to the ſaid Charles Bourne, or that the ſaid Charles Bourne ever experienced from the ſaid Sir James Wallace any inſtances of inſult, outrage, and an un-officer like behaviour, or that the ſaid Sir James Wallace ever, on obſerving the ſaid Charles Bourne on the quarter-deck, came out of his cabin with his fiſts clenched, in a menacing and provoking manner, driving the ſaid Charles Bourne from ſide to ſide of the ſhip. And this deponent ſaith, that he verily * believes that if any ſuch thing had ever happened on board the ſaid ſhip, this deponent ſhould either have ſeen or heard of the ſame. And this deponent ſaith, that on the 24th of April, according to the beſt of this deponent's recollection and belief as to the time, and which this deponent believes was the day after the ſaid Charles Bourne had a quarrel with Mr. Stephenſon, the ſecond lieutenant of the ſaid ſhip, for ordering the ward-room lights to be put out, this deponent was upon the quarter-deck within a few paces of the ſaid Sir James Wallace, who was then walking on the quarter-deck, and that whilſt the ſaid Sir James Wallace was walking there, the defendant Charles Bourne came upon the ſame ſide of the quarter-deck, and walked up to and paſſed the ſaid Sir James Wallace, called to Mr. Spry, the firſt lieutenant of the ſaid ſhip, who was then on the oppoſite ſide of the deck, and told the ſaid Mr. Spry, that his the ſaid Sir James Wallace's orders were, that Mr. Bourne ſhould not walk with him, or words to that purport or effect, according to the beſt of this deponent's recollection and belief, upon which the ſaid Charles Bourne turned round and made ſome ſhort reply to the ſaid Sir James Wallace, and then quitted the quarter-deck, but this deponent poſitively ſaith, that the ſaid Sir James Wallace did not come running out of his cabin at the time that the ſaid Charles

* This gentleman has the moſt extenſive faith :—a fortunate poſſeſſion for ſome young men, as they mould it to what form they pleaſe, making it happily ſubſervient to their intereſts.

Bourne ſo came upon the quarter-deck, in a * violent manner with his fiſts clenched to the ſaid Charles Bourne's face, for that the ſaid Sir James Wallace had been walking on the quarter-deck for ſome time before, and was walking there when the ſaid Charles Bourne came upon the quarter-deck. And this deponent poſitively ſaith, that the ſaid Sir James Wallace did not then, or at any other time that this deponent ever ſaw, or heard, clench his fiſt to the face of the ſaid Charles Bourne in any manner whatſoever. And this deponent ſaith, that on or about the 30th of April, being about ſix days after the ſaid ſhip the Warrior arrived at Jamaica, and the ſaid Charles Bourne was ſoon afterwards ordered by Lord Rodney from the Warrior on board the Hector.

Sworn at my Chambers in Serjeants Inn, 21ſt day of June, 1783,
Before F. BULLER.

BENJ. MAITLAND.

AFFIDAVIT of JAMES MADEN, Eſq; No. XI.

JAMES MADEN, of Newport-ſtreet, in the Pariſh of Saint Martin, in the Fields, in the County of Middleſex, Firſt Clerk in the Marine Department of the Admiralty, maketh oath and ſaith, that he hath ſome time known and been intimately acquainted with the defendant Charles Bourne, and that in a converſation which the ſaid Charles Bourne had with this deponent ſome time in the month of December laſt, relating to a difference between the ſaid Charles Bourne and Sir James Wallace, the ſaid Charles Bourne told this deponent, that he, the ſaid Charles Bourne, had been at Bath to demand ſatisfaction of the ſaid Sir James Wallace upon the ſubject of the ſaid difference, and that he had ſent ſeveral meſſages to him, but that the ſaid Sir James Wallace declined to meet him the ſaid Charles Bourne, and that he the ſaid Charles Bourne had afterwards

* See the depoſitions of Lieutenant Monke and the defendant, who poſitively ſwear that Sir James Wallace was guilty of this violence.

wards met the ſaid Sir James Wallace in the ſtreet at Bath, and had ſtruck the ſaid Sir James Wallace with his the ſaid Charles Bourne's cane, and that on the ſaid Charles Bourne's return to London, Lord Cork had waited on Mr. Sleigh (a relation of the ſaid Sir James Wallace) with a meſſage from the ſaid Charles Bourne to the ſaid Sir James Wallace, and that the ſaid Lord Cork was to have gone out with him the ſaid Charles Bourne as his ſecond, but that the ſaid Sir James Wallace would not meet the ſaid Charles Bourne. And this deponent ſaith, that the ſame being at that time matter of public converſation, and the ſaid Charles Bourne having, as this deponent believes, told the ſame to ſeveral other perſons as well as this deponent, he this deponent did not conſider ſuch declaration of the ſaid Charles Bourne to this deponent as a ſecret, and therefore reported the ſame again to ſeveral other perſons, as it had been ſo related by the ſaid Charles Bourne to this deponent. And this deponent ſaith, that in conſequence of his having ſo reported the ſame, this deponent, on or about the 21ſt day of December laſt, according to the beſt of this deponent's recollection as to the time, was called upon at his houſe in Newport-ſtreet, by Captain Ralph Dundas of the navy, and the ſaid Mr. Sleigh, who deſired to know from this deponent relating to the ſaid buſineſs, when this deponent told them he would be very explicit with them, for that the defendant Charles Bourne had declared to this deponent what this deponent hath heretofore mentioned, or words to that effect, upon which the ſaid Mr. Sleigh told this deponent it was a moſt infamous falſehood, or words to that effect. And this deponent ſaith, that he was afterwards called upon at the Admiralty by the Right Honourable the Earl of Cork and the ſaid Mr. Sleigh, in company with another gentleman, who appeared to this deponent to be an officer, when the ſaid Earl of Cork queſtioned this deponent touching the ſaid Charles Bourne's having declared to this deponent, that he the ſaid Earl of Cork had waited upon the ſaid Mr. Sleigh, or the ſaid Sir James Wallace, with a meſſage from the ſaid Charles Bourne, and that the ſaid Earl of Cork was to have gone out with the ſaid Charles Bourne as his ſecond, and upon

this deponent's admitting that the ſaid Charles Bourne had made ſuch a declaration to this deponent, the ſaid Earl of Cork told this deponent, that the ſame was not true, and that he the ſaid Earl of Cork had never, directly or indirectly, done any ſuch thing, which ſurprized this deponent very much. And this deponent ſaith, that he afterwards told the ſaid Charles Bourne, that what he had ſo declared to this deponent, had been contradicted both by the Earl of Cork and the ſaid Mr. Sleigh, and that it had been ſaid, that the ſaid Charles Bourne had never ſtruck the ſaid Sir James Wallace at Bath, and that this deponent apprehended the ſame might be a very ſerious buſineſs to him the ſaid Charles Bourne, upon which the ſaid Charles Bourne told this deponent, that he the ſaid Charles Bourne did not know what was meant by his not having ſtruck the ſaid Sir James Wallace, for that he the ſaid Charles Bourne had ſhaken his cane over the ſaid Sir James Wallace, and ſtruck him on the hat.

Sworn at my houſe in Lincoln's-Inn-Fields, June 21, 1783, before me,
F. BULLER.

JAS. MADEN.

AFFIDAVIT of JAMES MENDENALL, No. XII.

* JAMES MENDENALL, of the city of Bath, in the county of Somerſet, Yeoman, maketh oath, and ſaith, that he, this deponent, in the month of December laſt, was, and ſtill is, a waiter at the White Hart Inn, in the ſaid city of Bath, and that in the evening of the 5th day of December laſt, a gentleman, who was then unknown to this deponent, but whoſe name, as this deponent was the next day informed by him, and believes, is

* Mr. Bourne ſhall not make any other note on this man's depoſition, but that he is a waiter at an inn at Bath, and Sir James Wallace had him up to London for the purpoſe of obliging him with this affidavit, little doubt remaining of his being perfectly ſatisfied for it, and his *expences* being *amply borne.*

is Bourne, and who as this deponent alſo believes is a Lieutenant of marines, and the defendant in this cauſe, came to the White-Hart-Inn, aforeſaid, in one of the London coaches, as this deponent believes, and that he ſpent that evening in the public coffee-room of the ſaid inn. And this deponent ſaith, that between ten and eleven o'clock the next morning, the ſaid Mr. Bourne ſtopt this deponent in the lobby of the ſaid inn, and ſaid to this deponent, "You ſeem to be an intelligent man, and a fit perſon for a very particular buſineſs in which I want to employ you." And he thereupon took this deponent into a parlour adjoining to the coffee-room; and there aſked this deponent if he, this deponent, knew where Sir James Wallace lodged, to which this deponent anſwered, that he did not; and the ſaid Charles Bourne then told this deponent, that the ſaid Sir James Wallace lodged at a Mr. Plura's in Melſom-ſtreet, and deſired this deponent to go to him there, and tell him that a gentleman at the White-hart wiſhed to ſpeak to him, the ſaid Sir James Wallace; and this deponent ſaith, that he, the ſaid Charles Bourne, particularly deſired that this deponent would not deliver the ſaid meſſage to any ſervant of the ſaid Sir James Wallace, but that he would ſee the ſaid Sir James Wallace, and deliver it to himſelf.

And this deponent ſaith, that he accordingly went immediately to the ſaid Sir James Wallace's lodgings in Melſom-ſtreet, aforeſaid, and delivered the ſaid meſſage to him whilſt he was in the dining-room there with Lady Wallace, as this deponent believes. And this deponent ſaith, that the ſaid Sir James Wallace then aſked this deponent the name of the gentleman, what ſort of a perſon he was, and whether he looked like an officer, and this deponent informed the ſaid Sir James Wallace that he did not know the gentleman's name, nor who he was, but told the ſaid Sir James Wallace that he had a foreign ſervant with him, as this deponent believes. And this deponent ſaith, that he doth not recollect that the ſaid Sir James Wallace then returned any direct anſwer to the ſaid meſſage of the ſaid Charles Bourne, whether he would or would not go to the White-hart Inn; but this deponent ſaith, that he, this deponent, returned to the ſaid Charles Bourne, and informed him that he had

had delivered his ſaid meſſage to the ſaid Sir James Wallace, upon which he, the ſaid Charles Bourne, ſeemed very much confuſed, and deſired this deponent to ſhew him into a private room, and this deponent accordingly conducted him into a room up one pair of ſtairs in the ſaid inn, adjoining to the room where the ſaid Charles Bourne had ſlept the preceding night, and where this deponent left him alone. And this deponent ſaith, that the ſaid Charles Bourne deſired this deponent to ſhew the ſaid Sir James Wallace into the ſame room as ſoon as he came to the ſaid inn. And this deponent alſo ſaith, that veryſoon afterwards a man who as this deponent believes, was a ſervant to Captain Webber, who was then at Bath, brought a ſword to the White Hart-Inn, and delivered the ſame to this deponent, and deſired this deponent to take the ſaid ſword into Mr. Bourne's room. And this deponent ſaith, that he accordingly carried and left the ſaid ſword in the ſaid Mr. Bourne's bed-room, adjoining to the room where the ſaid Mr. Bourne was then waiting for the ſaid Sir James Wallace. And this deponent further ſaith, that after the ſaid Charles Bourne had waited about half an hour in the ſaid room, in expectation that the ſaid Sir James Wallace would come to him, the ſaid Charles Bourne looked over the banniſters of the ſtair-caſe, and deſired this deponent, who was then in the lobby, to go up to him, and this deponent accordingly went up and followed the ſaid Charles Bourne into the room. And this deponent ſaith, that the ſword which a little before had been delivered to this deponent, by the ſaid Captain Webber's ſervant, and left by this deponent in the ſaid Charles Bourne's bed-room, was then lying upon one of the ſide-tables in the room where the ſaid Charles Bourne then was, and the ſaid Charles Bourne then appeared to this deponent to be very much agitated, and deſired this deponent to go again to the ſaid Sir James Wallace to know whether he would come or not; and this deponent ſaith, that he accordingly went again to the ſaid Sir James Wallace's lodgings, and delivered the ſaid meſſage to the ſaid Sir James Wallace, who again aſked this deponent the gentleman's name, which this deponent told Sir James Wallace the gentleman would not ſend, but deſired to know whether he,

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the ſaid Sir James Wallace, would come or not, upon which the ſaid Sir James Wallace, ſaid that he certainly ſhould not go to any gentleman whoſe name he did not know, or who would not ſend his name, or to that effect, according to the beſt of this deponent's remembrance and belief, and which anſwer this deponent delivered to the ſaid Charles Bourne, who immediately with very great warmth, told this deponent to go back, and tell the ſaid Sir James Wallace that his name was Bourne. And this deponent ſaith, that he accordingly went back again to the ſaid Sir James Wallace, and told him that the gentleman's name was Bourne, upon which the ſaid Sir James Wallace ſaid, that he had no buſineſs with that gentleman; which anſwer this deponent carried back and delivered to the ſaid Charles Bourne, who ſaid, "no buſineſs with me has he," and immediately went out of the houſe in a very great rage and paſſion. And this deponent ſaith, that the ſaid Charles Bourne ſoon afterwards returned again to the ſaid inn, and wrote a letter to the ſaid Sir James Wallace, which he deſired this deponent to take to the ſaid Sir James Wallace's lodgings; and this deponent aſked the ſaid Charles Bourne if he this deponent, was to wait for an anſwer to the ſaid letter, when the ſaid Charles Bourne informed this deponent that the ſaid letter did not require any anſwer; and this deponent thereupon carried the ſaid letter, and delivered it to one of the ſervants at the ſaid Sir James Wallace's lodgings; and this deponent ſaith, that he doth not remember that he ever ſaw any perſon in his life more agitated, than the ſaid Charles Bourne appeared to be at the ſeveral times that he deſired this deponent to carry ſuch meſſages as aforeſaid to the ſaid Sir James Wallace, and at the time that this deponent returned to him again with the ſaid Sir James Wallace's anſwers. And this deponent ſaith, that the ſaid Charles Bourne never intimated to this deponent the buſineſs upon which he wanted the ſaid Sir James Wallace, but upon this deponent's reflecting upon the whole of the ſaid Charles Bourne's behaviour, and the danger that the ſaid Sir James Wallace would have been in if he had gone to the ſaid Charles Bourne, as the ſaid Charles Bourne had a brace of piſtols with him there as well as the ſword, which had

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been ſo brought for him by the ſaid Captain Webber's ſervant, as aforeſaid; this deponent was very much concerned that he had not intimated to the ſaid Sir James Wallace his, this deponent's ſuſpicions of the ſaid Charles Bourne's intentions againſt the ſaid Sir James Wallace; and cautioned him againſt going to the ſaid Charles Bourne. And this deponent apprehends, and verily believes, that ſome fatal conſequences would have enſued if the ſaid Sir James Wallace had gone to the ſaid Charles Bourne upon any of the ſaid meſſages which were ſo carried to him by this deponent from the ſaid Charles Bourne, as aforeſaid. And this deponent ſaith, that he, the ſaid Charles Bourne, went away from the ſaid inn about four o'clock in the morning of the ninth of December, in one of the London coaches, as this deponent believes, and that between the time of this deponent's carrying the aforeſaid letter from the ſaid Charles Bourne to the ſaid Sir James Wallace, and the ſaid Charles Bourne's leaving the White-Hart Inn, as aforeſaid, the ſaid Bourne at different times frequently and publickly, both in the coffee-room and other parts of the ſaid inn ſpoke many very diſreſpectful words of the ſaid Sir James Wallace to different perſons that came into, or were in the ſaid inn, reflecting very much on the character and courage of the ſaid Sir James Wallace, and intending to prejudice the minds of ſuch perſons againſt the ſaid Sir James Wallace.

JAMES MENDENALL.

Sworn at Weſtminſter-hall,
3d June, 1783.

F. BULLER.

AFFIDAVITS of JAMES WALLIS and JOSEPH MOORE. No. XII.

JAMES WALLIS, of Deptford, in the county of Kent, Shipwright, late carpenter of his majeſty's ſhip the Warrior, and now carpenter of his majeſty's ſhip the Orion, and JOSEPH MOORE, of New-Court, Coleman-ſtreet

man-ſtreet, London, mariner, late acting ſchoolmaſter on board his majeſty's ſhip the Warrior, under the command of the above-named Sir James Wallace, jointly and ſeverally make oath and ſay, that this deponent, James Wallis, was the carpenter of the ſaid ſhip, the Warrior, and that this deponent, Joſeph Moore, was the acting ſchoolmaſter on board the ſaid ſhip, the Warrior, at the time that ſhe ſailed from Portſmouth on her voyage to the Weſt Indies, in the month of January, 1782, and that they and each of them continued in ſuch their reſpective ſtations on board the ſaid ſhip, until the month of July following, when this deponent, James Wallis, removed from the ſaid ſhip, then at Jamaica, as an invalid to return to Europe, and this deponent, Joſeph Moore, was removed to his majeſty's ſhip the Reſolution upon the ſaid Sir James Wallace being appointed to the command of that ſhip; and both theſe deponents ſay, that the defendant Charles Bourne was the firſt Lieutenant of marines on board the ſaid ſhip the Warrior, at the time that ſhe ſailed from Portſmouth, and that he continued on board the ſaid ſhip until after the engagement of the 12th of April, 1782, between the Engliſh and French fleets, when he was ordered by Lord Rodney, at Jamaica, on board the Hector, one of the French ſhips taken in that engagement. And theſe deponents ſay that whilſt his majeſty's ſhip the Warrior was laying in the Road of Madeira in her voyage to the Weſt Indies, the ſaid Sir James Wallace gave orders that no officer belonging to the ſaid ſhip ſhould be abſent from the ſaid ſhip during the night, but gave them leave to go on ſhore every day.

And both theſe deponents ſay, that the defendant, Charles Bourne, went on ſhore one morning, and did not return to the ſhip for two nights. And this deponent, Joſeph Moore, for himſelf ſeverally ſaith, that the ſaid Charles Bourne got it to ſeveral quarrels with the inhabitants there, and was ill treated by them, as this deponent hath been informed and believes. And both theſe deponents ſay, that after the ſaid Charles Bourne returned on board the ſaid ſhip, the Warrior, he complained of the ill-treatment that he had received from the inhabitants whilſt he was on ſhore, and attributed the ſame to the ſaid Sir

James Wallace, for his not having introduced him as a British officer, to the Governor of Madeira. And this deponent, Joseph Moore, for himself severally saith, that one day, on the said ship's passage to Jamaica, as the said Sir James Wallace was walking on the larboard side of the quarter-deck, this deponent, who was then on the larboard side of the quarter-deck, saw the said Charles Bourne walk up to the said Sir James Wallace in a very jesting and insulting manner, threw his arms about, and looking the said Sir James Wallace in the face as he passed him, and that the said Charles Bourne afterwards returned back in the same manner; and that the said Sir James Wallace, in order, as appears to this deponent, to avoid being jostled or shoved by the said Charles Bourne, stept aside on the midship grating, to let the said Charles Bourne pass him. And this deponent saith, that the said Sir James Wallace did not then come running out of his cabin, in a violent manner, with his fists clenched to the said Charles Bourne's face, nor did the said Sir James Wallace then make use of any abusive or ill language to the said Charles Bourne, or treat him with any kind of menacing or rudeness whatsoever. And both these deponents say, that they never saw nor heard, nor do they know or believe, that the said Sir James Wallace ever treated the said Charles Bourne ill, in any respect whatsoever, during any of the time that he was on board his Majesty's said ship the Warrior, and under the command of the said Sir James Wallace, or that the said Charles Bourne, during the voyage of the Warrior from England to Jamaica, experienced from Sir James Wallace any instances of insult, outrage, and un-officerlike behaviour; or that the said Sir James Wallace frequently, or ever, when he saw the said Charles Bourne upon the quarter-deck, did go out of his cabin with his fists clenched in a menacing and provoking manner, driving the said Charles Bourne from side to side of the said ship. And both these deponents say, that if the said Sir James Wallace had ever treated the said Charles Bourne, whilst he was on board the said ship the Warrior, and under the command of the said Sir James Wallace in any abusive, insulting, menacing, or un-officerlike manner, these deponents must either have seen or heard of the same, or

ſome part thereof, which theſe deponents, or either of them never did. And both theſe deponents ſay, that they have frequently heard the ſaid Charles Bourne, whilſt he was on board the ſaid ſhip, ſpeak many diſreſpectful words of the ſaid Sir James Wallace to different perſons belonging to the ſaid Sir James Wallace, and tending to prejudice the minds of the officers and other perſons belonging to the ſaid ſhip againſt the ſaid Sir James Wallace. And both theſe deponents ſay, that during the time that the ſaid Charles Bourne was on board the ſaid ſhip, the Warrior, he had frequent diſputes and quarrels with many of the officers belonging to the ſaid ſhip, and as theſe deponents verily believe, prevailed upon Mr. Markett, the third lieutenant, and Mr. Monke, the fourth lieutenant of the ſaid ſhip, to join him, the ſaid Charles Bourne, in oppoſition to the reſt of the officers of the ſaid ſhip. And this deponent, Joſeph Moore, for himſelf ſeverally ſaith, that ſoon after the arrival of the ſaid ſhip, the Warrior, at Jamaica, and before the ſaid Charles Bourne was ordered by Lord Rodney from on board the ſaid ſhip to the Hector, this deponent, on going one day into the ward-room, to ſpeak to Mr. Monke, the fourth lieutenant of the Warrior, diſcovered the defendant, Charles Bourne, and the ſaid Mr. Markett, and George Paris Monke, in cloſe conference together, upon a paper writing, which the ſaid Charles Bourne was reading to the ſaid Mr. Markett and Mr. Monke, who were making their remarks upon the ſame, and which, from ſo much as this deponent then heard thereof, contained reflections upon the ſaid Sir James Wallace, and his conduct on board the ſaid ſhip. And both theſe deponents further ſay, that during the whoſe time that the ſaid Charles Bourne continued on board the ſaid ſhip, the Warrior, he was very much elated with pride, greatly diſſatisfied with all the officers of the ſhip, except the ſaid Mr. Markett and George Paris Monke, impatient of contradiction, and abounding in malice and reſentment, and that he did not behave, in any other reſpects, with that good order and diſcipline, which is obſerved by officers on board his Majeſty's ſhips of war. And theſe deponents verily believe, that if the ſaid Sir James Wallace had brought the ſaid Charles Bourne to a court

martial, for his improper conduct either at St. Lucia, or Jamaica, that the ſaid Charles Bourne would have been broke for the ſame.

JAMES WALLIS.
JOSEPH MOORE.

Both ſworn at my chambers in Serjeant's-Inn, June 21, 1783. Before me,

E. BULLER.

AFFIDAVIT of ROBERT FARRIS, No. XIII.

ROBERT FARRIS, of Ramſgate, in the county of Kent, gentleman, a lieutenant in his Majeſty's navy, maketh oath and ſaith, that for ſome time before, and at the time of the quarrel between the defendant, Charles Bourne, and Mr. Stephenſon, the ſecond lieutenant of his Majeſty's ſhip, the Warrior, and before the ward-room lights were put out, as mentioned in the affidavit made by this deponent, in this caſe, on the ſecond day of June inſtant, the ſaid Mr. Stephenſon was in his bed, in the ward-room, and that he had ſupped that evening before he went to bed with the meſs, in the ward-room, and was not intoxicated with liquor, as this deponent verily believes*. For this deponent ſaith, that the ſaid Mr. Stephenſon is a very ſober, quiet man, and this deponent doth not remember or believe, that he then, or at any other time, behaved with great rudeneſs and impropriety to any of the officers belonging to the ſaid ſhip, or had then any quarrel with any other perſon except the ſaid Charles Bourne, and that the ſaid quarrel was begun and occaſioned by the ſaid Charles Bourne only, after the ſaid Mr. Stephenſon was in bed, that the meſſage thereupon ſent to the ſaid Sir James Wallace, was ſo ſent by the ſaid Charles Bourne alone, and in his own name.

* See the joint affidavits of Lieutenant Monke, Markett, Nicholſon, Hodge, and Mr. Richards, in the Appendix.

name and not by the gentlemen of the ward-room, who were not at all concerned in any manner, in the ſaid quarrel, nor did they ſend their reſpectful compliments to the ſaid Sir James Wallace, and requeſt him to order the ſaid candles to be lighted again. And this deponent ſaith, that it was impoſſible that the maſter of the ſaid ſhip could be in the ſaid Sir James Wallace's cabin, at the time he then ſent for the ſaid Charles Bourne into his cabin, for that the maſter of the ſaid ſhip had loſt his leg, in the engagement of the 12th day of the ſaid month of April, and was then confined to his bed, in a cabin in the gun-room*. And this deponent doth not believe that the ſurgeon of the ſaid ſhip was then in the ſaid Sir James Wallace's cabin, as he was at that time ill, and in his own cabin, as this deponent verily believes. And this deponent ſaith, that he never heard, nor doth he know, or believe, that the next morning that the ſaid Mr. Stephenſon requeſted the gentlemen of the ward-room to attend, while he declared his concern for his behaviour to the ſaid Charles Bourne, or that he declared that he was drunk, which this deponent does not believe, and that he was ſorry for what had happened, and intreated the ſaid Charles Bourne's pardon and forgiveneſs, and which this deponent ſays he muſt have have heard, if any ſuch thing had ever happened. And this deponent ſaith, that he was upon the larboard ſide of the quarter-deck, near the grating, on the next day, at the time that the ſaid Sir James Wallace gave orders to Mr. Spry, that the ſaid Charles Bourne ſhould not walk with him, and that this deponent was then within a few paces of the ſaid Sir James Wallace. And this deponent ſaith, that the ſaid Sir James Wallace had been walking there ſome time, and that the ſaid Charles Bourne had been walking on the oppoſite of the quarter-

* Mr. Stone, the maſter of the Warrior, having loſt his leg in the action of the 12th of April, and being by that circumſtance unable to do his duty, Sir James Wallace appointed the above Farris, at that time one of the mates, to fill his ſtation in the ſhip, he was therefore looked on, and treated by every one, as maſter; and is the perſon alluded to by Mr. Bourne, as being preſent at a converſation in Sir James Wallace's cabin, on or about the 24th of the ſame month, though Mr. Ferris, by finking the circumſtance of his appointment, and ſtrangely pretending to believe what could not poſſibly happen, that the poor wounded man, whoſe ſituation was univerſally known, and as univerſally lamented, was the perſon ſworn to, endeavours to invalidate the affidavit of Mr. Bourne.

quarter-deck, with Mr. Monke, the fourth lieutenant of the ſaid ſhip, and croſſed over from him to the lieutenant's ſide of the quarter-deck, with an intention, as appeared to this deponent, from his behaviour, to offer ſome inſult to the ſaid Sir James Wallace; and this deponent abſolutely denies, that the ſaid Sir James Wallace then came running out of his cabin in a violent manner, with his fiſts clenched to the ſaid Charles Bourne's face, muttering the word ſcoundrel, for this deponent ſaith, that he was then ſo near to the ſaid Sir James Wallace, that if he had muttered or ſpoken any ſuch word, this deponent muſt have heard the ſame. And this deponent ſaith, that they were not at ſea for two or three weeks after that time, for that they arrived at Jamaica on the 30th of April, which was about ſix days afterwards. And this deponent ſaith, that during the whole voyage of the ſaid ſhip, the Warrior, from England to Jamaica, and during all the time that the ſaid Charles Bourne continued on board, or belonged to the ſaid ſhip, this deponent never ſaw, nor did he ever hear, nor doth he know or believe, that the ſaid Sir James Wallace ever treated the ſaid Charles Bourne ill, in any reſpect whatſoever, or ever made uſe of any abuſive, inſulting or improper language to the ſaid Charles Bourne, or that the ſaid Charles Bourne ever experienced from the ſaid Sir James Wallace any inſtances of inſult, outrage, and unofficerlike behaviour, or, that the ſaid Sir James Wallace ever, on obſerving the ſaid Charles Bourne on the quarter-deck, came out of his cabin, with his fiſts clenched in a menacing and provoking manner, driving the ſaid Charles Bourne from ſide to ſide of the ſaid ſhip. And this deponent ſaith, that he verily believes, that if any ſuch thing had ever happened on board the ſaid ſhip, this deponent ſhould either have ſeen or heard of the ſame.

ROBERT FARRIS.

Sworn at Weſtminſter-hall,
June 24, 1783.

E. BULLER.

AFFIDAVIT

AFFIDAVIT of PETER DUPUY ABBOT. No. XIV.

PETER DUPUY ABBOT, of New North-ſtreet, near Red-lion ſquare, in the county of Middleſex, gentleman, a lieutenant in his Majeſty's royal navy, maketh oath, and ſaith, that he, this deponent, was the firſt lieutenant of and on board his Majeſty's ſhip of war the Reſolution, and that in or about the beginning of the month of July, 1782, Sir James Wallace, who then commanded his Majeſty's ſhip the Warrior, was appointed to the command of the Reſolution, both which ſhips were then laying off Port-royal, in Jamaica. And this deponent ſaith, that his Majeſty's ſaid ſhip the Reſolution, afterwards ſailed from Port-royal for England, on or about the 22d day of July, 1782, and arrived at Portſmouth on or about the 26th day of September following, under the command of the ſaid Sir James Wallace. And this deponent ſaith, that he afterwards went to Bath, where he was in the beginning of December laſt, and that in the evening of Friday, the 6th day of December laſt, according to the beſt of this deponent's recollection as to the time, whilſt this deponent was in the lower rooms at Bath, he was accoſted by the defendant Charles Bourne, who aſked this deponent, if he, the ſaid Charles Bourne, had not had the pleaſure of ſeeing this deponent in the Weſt-Indies, to which this deponent anſwered he believed he might, but this deponent could not then recollect at what time or place in particular, he had ſo ſeen him, as this deponent never had any acquaintance with the ſaid Charles Bourne. And this deponent ſaith, that the ſaid Charles Bourne then aſked this deponent, what ſhip this deponent belonged to, and how long he had been arrived from the Weſt-Indies, when this deponent informed the ſaid Charles Bourne, that he this deponent belonged to, and came home in the Reſolution, and the ſaid Charles Bourne then ſaid to this deponent, You then know the gallant knight, Sir James Wallace, pray how do you like him; to which this deponent replied, that he liked him very well, and the ſaid Charles Bourne, expreſſing ſome ſur-

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prize thereat, told this deponent, that he, the ſaid Charles Bourne, had ſerved on board the Warrior, whilſt that ſhip was under the command of the ſaid Sir James Wallace, and that the ſaid Sir James Wallace had uſed him, the ſaid Charles Bourne, very ill, whilſt he was under his command, and that he, the ſaid Charles Bourne, was then come to Bath, on purpoſe to call the ſaid Sir James Wallace to account for the ſame, or expreſſed himſelf to that purport, or effect; but the ſaid Charles Bourne did not inform this deponent in what manner, or on what account, or at what place, the ſaid Sir James Wallace had ſo uſed him very ill, but made uſe of many ſcandalous words and expreſſions, reflecting upon the conduct and character of the ſaid Sir James Wallace; and this deponent therefore reſolved to wait upon the ſaid Sir James Wallace the next morning and inform him of the ſame, as this deponent knew that the ſaid Sir James Wallace intended to leave Bath on the day following. And this deponent ſaith, that the next morning this deponent met the ſaid Sir James Wallace walking in the Creſcent, and aſked him if he had ſeen the ſaid Charles Bourne, when the ſaid Sir James Wallace informed this deponent, that the ſaid Charles Bourne had the day before ſent a waiter from the White Hart Inn to him the ſaid Sir James Wallace, with a verbal meſſage, that a gentleman at the White Hart wanted to ſpeak to him the ſaid Sir James Wallace, without ſending any name, and that on his the ſaid Sir James Wallace's having ſent back the waiter to enquire the gentleman's name, the ſame waiter had returned, and told him the ſaid Sir James Wallace, that the gentleman did not chuſe to ſend his name, but deſired to know, whether he the ſaid Sir James Wallace would go to him there or not, and that on his the ſaid Sir James Wallace having returned for anſwer, that he certainly would not go to any one aſhamed of telling his name, the ſaid Charles Bourne had ſent back the ſaid waiter a third time, to inform the ſaid Sir James Wallace that the gentleman's name was Bourne, and that on the ſaid Sir James Wallace's having returned for anſwer, that he had no buſineſs with that gentleman, the ſaid Mr.

Bourne

Bourne had ſent him a very abuſive letter, which had induced him the ſaid Sir James Wallace to believe, that the ſaid Charles Bourne intended to have a private rencounter with him, and that in order to be prepared, in caſe the ſaid Charles Bourne ſhould attack him, he the ſaid Sir James Wallace had that morning been walking in the public ſtreets and places of Bath, with his piſtols in his pocket, and that the ſaid Charles Bourne had met the ſaid Sir James Wallace a little before this deponent joined the ſaid Sir James Wallace, in the ſtreet where the ſaid Sir James Wallace lodged, and that on the ſaid Charles Bourne's going up to the ſaid Sir James Wallace, and beginning to ſpeak to him, the ſaid Sir James Wallace had told him that he could have no converſation with him, but to ſend his friend and propoſe his terms, and that he the ſaid Sir James Wallace was provided for him, and had ſhewed him one of his piſtols, and told him, that if he the ſaid Charles Bourne attempted to inſult him he would put him to death, and that the ſaid Charles Bourne thereupon went away abuſing him the ſaid Sir James Wallace, and that he the ſaid Sir James Wallace then expected to receive a meſſage from the ſaid Charles Bourne, in conſequence of what he had ſo ſaid to him, and deſired this deponent would accompany him, in caſe he ſhould have occaſion to meet the ſaid Charles Bourne, in conſequence of any meſſage which he the ſaid Sir James Wallace might receive from the ſaid Charles Bourne, which this deponent promiſed to do. And this deponent ſaith, that he afterwards walked about the ſtreets in Bath with the ſaid Sir James Wallace for a conſiderable time. And this deponent ſaith, that after having walked about with the ſaid Sir James Wallace for ſome time, the ſaid Sir James Wallace deſired this deponent to dine with him, which this deponent believes the ſaid Sir James Wallace did with a view of having this deponent to be a witneſs of his conduct, upon his receiving any meſſage from the ſaid Charles Bourne. And this deponent ſaith, that he afterwards went home to dreſs, and on his going to the ſaid Sir James Wallace's to dinner, the ſaid Sir James Wallace informed this deponent, that ſince they had parted, he the ſaid Sir James

Wallace had received a letter from the ſaid Charles Bourne, which the ſaid Sir James Wallace then gave to, and deſired this deponent to read, and aſked this deponent in what light he conſidered the ſaid letter, when this deponent told the ſaid Sir James Wallace, that in the opinion of this deponent, the ſaid letter contained nothing but ſcandalous abuſe, and ſeemed to this deponent to have been written by the ſaid Charles Bourne, with an intent to provoke the ſaid Sir James Wallace to ſend a challenge to the ſaid Charles Bourne; and the ſaid Sir James Wallace ſaid, that he perceived that the ſaid Charles Bourne meant nothing but abuſe without coming to a point, and that he therefore did not think it worth his while to detain his family any longer at Bath, and that as he had arranged all his matters with a view of leaving Bath the next day, he would not ſtay there any longer on account of the ſaid Charles Bourne. And this deponent ſaith, that about noon the next day, being Sunday, the eighth of December, the ſaid Sir James Wallace and his family left Bath, and that in the evening of the ſame day this deponent called at the White Hart Inn, and inquired if the ſaid Charles Bourne was there, and that the ſaid Charles Bourne, who was then in a room which opened into the paſſage where this deponent was ſtanding, at the time that he made the ſaid enquiry, and who, as this deponent believes, heard this deponent make ſuch enquiry, or ſaw this deponent go into the ſaid inn, immediately came out into the paſſage and told this deponent, that he the ſaid Charles Bourne took it very kind in this deponent's calling upon him there, and deſired this deponent to walk into the room, when this deponent told the ſaid Charles Bourne, that he, this deponent, wiſhed to be informed by the ſaid Charles Bourne, of ſome of the particulars that had happened between him and the ſaid Sir James Wallace, as this deponent had heard that he the ſaid Charles Bourne had been calling the ſaid Sir James Wallace a coward, a name which this deponent knew the ſaid Sir James Wallace did not deſerve, and that he the ſaid Charles Bourne had reported in many places, that he had called upon the ſaid Sir James Wallace, to give him the

ſaid

ſaid Charles Bourne the ſatisfaction of a gentleman, which the ſaid Sir James Wallace had refuſed to do, upon which the ſaid Charles Bourne ſaid to this deponent, that he the ſaid Bourne did not believe the ſaid Sir James Wallace to be a coward, but that the ſaid Sir James Wallace had behaved to the ſaid Charles Bourne like a ſcoundrel and a raſcal, and had refuſed to give him the ſatisfaction of a gentleman, and that he the ſaid Charles Bourne would cane the ſaid Sir James Wallace wherever he met him, upon which this deponent told the ſaid Charles Bourne that he had no cauſe or reaſon whatſoever, for ſaying what he then did reſpecting the ſaid Sir James Wallace, that the letters which the ſaid Charles Bourne had ſent to the ſaid Sir James Wallace, and which this deponent told the ſaid Charles Bourne the ſaid Sir James Wallace had ſhewn to this deponent, did not import any demand of gentleman-like ſatisfaction, or contain any thing but mere abuſe, and that this deponent could not conſider any of the meſſages which the ſaid Charles Bourne had ſent to the ſaid Sir James Wallace by the waiter of the inn, in the light of a meſſage, to be ſent from one gentleman to another upon ſuch buſineſs, but that if the ſaid Charles Bourne had ſent any gentleman to the ſaid Sir James Wallace with a proper meſſage, this deponent believed that the ſaid Sir James Wallace would have anſwered the ſame, and met the ſaid Charles Bourne, and this deponent then alſo told the ſaid Charles Bourne, that the letters which had been ſent by him to the ſaid Sir James Wallace, appeared to this deponent to be written with a view or intent to provoke the ſaid Sir James Wallace to ſend a challenge to the ſaid Charles Bourne, to which the ſaid Charles Bourne replied, yes, that he wiſhed to have had it ſo, and that he had not ſent the ſaid Sir James Wallace any written challenge, for that he had rather Sir James Wallace ſhould have challenged him the ſaid Charles Bourne, and that he the ſaid Charles Bourne knew the ſaid Sir James Wallace, and therefore ſhould be very careful how he acted with him the ſaid Sir James Wallace, or words to that effect, upon which this deponent aſked the ſaid Charles Bourne what then were his the ſaid Charles

Bourne's intentions towards the ſaid Sir James Wallace, in caſe the ſaid Sir James Wallace had gone to him the ſaid Charles Bourne at the White Hart Inn, upon any of the ſaid meſſages, which the ſaid Charles Bourne had ſent to the ſaid Sir James Wallace, by the waiter of the ſaid inn, and the ſaid Charles Bourne told this deponent, that he the ſaid Charles Bourne did not then know what he ſhould have done to the ſaid Sir James Wallace, or how he ſhould have acted, but that if the ſaid Sir James Wallace had then refuſed to give him the ſaid Charles Bourne ſatisfaction, he the ſaid Charles Bourne was determined to have beaten the ſaid Sir James Wallace, and the ſaid Charles Bourne then aſked this deponent, if he, this deponent, thought that the ſaid Sir James Wallace would ſtill meet him the ſaid Charles Bourne, in caſe the ſaid Charles Bourne ſhould ſend a gentleman to the ſaid Sir James Wallace with a proper meſſage, and this deponent told the ſaid Charles Bourne, that this deponent believed the ſaid Sir James Wallace certainly would do ſo, and the ſaid Charles Bourne then ſaid that he would go immediately to London, and get a gentleman there to wat upon the ſaid Sir James Wallace, and that if the ſaid Sir James Wallace did not then give him, the ſaid Charles Bourne, ſatisfaction, he, the ſaid Charles Bourne, would immediately publiſh the letters, which he the ſaid Charles Bourne had written, and ſent to the ſaid Sir J. Wallace.

PETER DUPUY ABBOTT.

Sworn before me, at my houſe in Lincoln's Inn Fields, this 21ſt day of June, 1783.

F. BULLER.

Re-ſworn at Weſtminſter-hall 30th June, 1783.

F. BULLER.

AFFI-

AFFIDAVIT of ARTHUR CHARTERS MURPHY, Eſq. No. XV.

ARTHUR CHARTERS MURPHY, of White-hall, Weſtminſter, and county of Middleſex, Eſq. and JOHN JACKSON, ſervant to the ſaid Arthur Charters Murphy, make oath and ſay, and firſt the ſaid Arthur Charters Murphy for himſelf ſaith, that ſome time in or about the month of Auguſt, 1781, he, this deponent, being walking upon the cauſeway which leads from the ſtairs, commonly called White-hall ſtairs, to the river; and having with him, in company, and under his care, two boys; and being followed by a very favorite, and remarkably beautiful ſpaniel dog, the deponent heard ſome perſons behind him upon the ſaid cauſeway, and almoſt at the ſame inſtant hearing the ſaid dog, then walking cloſe behind him, give a loud yell, he turned round to ſee who had ſtruck, or otherwiſe ill-uſed the ſaid dog, concluding the ſaid ſtroke to have been given by ſome one of the boatmen who generally ply at the ſaid ſtairs, or by ſome perſon of that claſs or deſcription, when he ſaw three men, one of whom he afterwards diſcovered to be Sir James Wallace, proſecutor in this cauſe, another to be Mr. William Sleigh, an attorney, who lived ſome where in or about Charing-Croſs, or White-hall aforeſaid, and the other perſon to be a Mr. Thompſon, a captain of a ſhip in the ſervice of the Eaſt India Company. And deponent ſaith, that upon ſeeing the ſaid Sir James Wallace with a ſtick in his hand, and in an expreſs attitude of having ſtruck the ſaid dog, he felt himſelf much hurt thereat, and thinking himſelf called upon to notice an action which he conceived to be a very high affront to him, he addreſſed the ſaid Sir James Wallace with as much mildneſs as the nature of the matter would poſſibly admit, and told him that it was not genteel to ſtrike the ſaid dog in that manner; upon which deponent ſaith, that the ſaid Sir James Wallace, and the other parties in his company, inſtead

inſtead of making any kind of apology for the ſaid ſtroke, ſeemed very much to exult upon the occaſion; declaring that deponent had not any right to take up the paſſage with his dog and his children, or words to that effect; whereupon deponent repeated his firſt obſervation, intending, if poſſible, at the ſame time to drop the buſineſs, foreſeeing, from the diſpoſition of the parties, that if continued, it would become more ſerious than this deponent wiſhed; but to this deponent's further ſurprize and indignation, the ſaid Sir James Wallace flew at the ſaid dog, and ſtruck him a third and a fourth time, demanding of deponent, *what he thought of that*; whereupon deponent ſaith, that being then very much provoked at the conduct of the ſaid Sir James Wallace, the deponent anſwered, *that he then was convinced of what he at firſt ſuſpected only, that he, meaning the ſaid Sir James Wallace, was a ſcoundrel and paltroon*, or words to that effect. And deponent further ſaith, that thereupon the ſaid Sir James Wallace flew at deponent, ſeized him by the collar, tore his ſtock, or neckcloth, ſhirt and waiſtcoat, and attempted, by ſeveral malicious kicks, at a particular part of his body, to do great injury. And deponent ſaith, that finding himſelf thus treated by a perſon who was at that time an utter ſtranger, and whoſe deportment and manners were ſo very outrageous and ruffianly, he, this deponent, determined to correct and puniſh him for his inſolence and indecency, and thereupon in turn tore his ſhirt, ſtock, and waiſtcoat, and alſo gave him ſeveral kicks in return for thoſe given as aforeſaid by the ſaid Sir James Wallace, And deponent ſaith, that having thus levelled the ſaid Sir James Wallace, in point of ſituation, he gave him a blow in the face, which cut his lip, and occaſioned him to bleed conſiderably, whereupon the ſaid William Sleigh and the ſaid Mr. Thompſon, interfered, and put an end to the ſcuffle, and all the parties agreed to retire to the chambers of this deponent, which were in the center of the building, annexed to the chapel of Whitehall, *and not in the upper part thereof*. And deponent ſaith, that at that time, and for ſeveral months before, Lieutenant Charles Bourne,

defendant

defendant in this cauſe, did live and had lived with him in the ſaid chambers, and was then in a very feeble ſtate of health, in conſequence of a deſperate wound which he received on ſervice in North America, in the remarkable action between the Iris and the Hermione frigate, near New-York, in North America, and that the ſaid Charles Bourne was at that time in the drawing-room of the ſaid chambers, with his arm in a crape ſling, who, upon ſeeing this deponent and the other parties enter the ſaid room, enquired what was the matter, or the occaſion of the affray, whereupon the ſaid Sir James Wallace, flew at the ſaid Charles Bourne, and ſeized him by the breaſt, demanding *if he would take the quarrel upon himſelf.* And deponent further ſaith, that the ſaid Charles Bourne anſwered, that he, meaning the ſaid Sir James Wallace, had got into good hands, but that poſſibly when he had done with Mr. Murphy, meaning this deponent, he might call him to account for his rudeneſs. And deponent further ſaith, that after much converſation, the ſaid Charles Bourne obſerved, that the quarrel aforeſaid was a mere accident, and that if the parties therein had known each other it would not have happened, and together with the ſaid Sleigh and the ſaid Mr. Thompſon, uſed every argument to conciliate the difference which had happened. And deponent ſaith, neither himſelf, nor the ſaid Charles Bourne, as deponent verily believes, knew until that moment, who, or what the ſaid Sir James Wallace, the ſaid Sleigh, or the ſaid Mr. Thompſon were. And deponent freely owns, that upon hearing the name of Sir J. Wallace, which at that time had been ſounded and reſounded from all the public news-papers, and who was then reputed a man of courage and public ſervice, he was extremely ſorry for the abject ſituation to which he had by his ill-conduct, reduced himſelf, and much concerned that it had fallen to his, this deponent's lot, to be the inſtrument of his diſgrace, this deponent always reſpecting the character of a brave man. And this deponent further ſaith, that from the repute which the ſaid Sir James Wallace then bore, he, this deponent, examined

mined him cloſely, to obſerve if he was at that time in any way intoxicated with liquor, and wiſhed if poſſible to find an excuſe for the outrage and aſſault herein mentioned. And this deponent admits that he might very poſſibly, under thoſe ſentiments, wiſh that the ſaid dog had been in the river before it occaſioned ſuch diſpute and violence. But deponent moſt poſitively and ſolemnly declares, that he never did expreſs any contrition for the part he had acted upon the occaſion, poſſeſſing at that moment what he ſtill continues to poſſeſs, the entire approbation of his own breaſt; and deponent ſaith, that after ſome time the ſaid Sir James Wallace and his two companions departed, ſeemingly reconciled. And deponent further ſaith, that on the morning of the next day, after the day upon which the ſaid affray happened, the ſaid Sleigh called at the chambers of the deponent, aforeſaid, and enquired for the ſaid Lieutenant Charles Bourne, and being introduced, remained in private with him for ſome time, when the ſaid Charles Bourne came to this deponent and ſhewed him a letter directed to Sir James Wallace, ſealed with a wafer, upon which was impreſſed two letters, one of which was an M, ſaying that from the letter upon the ſaid wafer, ſaid Sleigh ſaid he apprehended it came from Mr. Murphy, meaning this deponent, to requeſt of him, the ſaid Charles Bourne, that he would prevail upon this deponent to let the diſpute drop. And deponent further ſaith, that the ſaid Charles Bourne did then uſe arguments to prevail upon him to let the matter drop. And deponent ſaith, that after denying the ſaid letter to be his writing, or any knowledge thereof, the ſaid Charles Bourne returned to the ſaid Sleigh, who upon hearing what had paſſed between deponent and ſaid Charles Bourne, retired ſeemingly well ſatisfied with the ſucceſs of his application. And deponent further ſaith, that in ſome time afterwards, being in company with the Reverend Doctor Morgan, confeſſor to his majeſty's houſhold, and Edward Morſe, Eſquire, chief juſtice of the province of Senegambia, two very intimate friends, the ſaid Reverend Dr. Morgan propoſed that deponent ſhould, by way of making light of the buſineſs, and eaſing, as much as poſſible, the

feelings

feelings which the ſaid Sir James Wallace, muſt neceſſarily experience on that occaſion, write to him, the ſaid Sir James Wallace, aſſuring him that he did not entertain any rancour, or ill-blood, but that on the contrary, he wiſhed to become a debtor to the goodneſs and generoſity of the ſaid Sir James Wallace, by recommending to his patronage a young man who had been at ſea, and would perhaps be a credit to his attention. And deponent further ſaith, that at the requeſt, and by the advice of the ſaid Dr. Morgan, and the ſaid Edward Morſe, Eſq. and alſo agreeably to his own concurring ſentiment and wiſh, he did write the letter annexed to the affidavit of the ſaid Sir James Wallace, and the ſaid Sleigh. But deponent moſt poſitively declares, that he never entertained the ſmalleſt idea of contrition for the part he had taken, as mentioned aforeſaid in the aforeſaid tranſaction at Whitehall-ſtairs. And the ſaid John Jackſon, for himſelf ſaith, that on the day of the tranſaction aforeſaid, he was preſent in an apartment belonging to his maſter, Mr. Murphy, when his ſaid maſter and Sir James Wallace, together with a Mr. Sleigh, an attorney and another perſon, who this deponent has ſince been informed was a Captain Thompſon, in the Eaſt-India trade, entered the ſaid apartment, and that in ſome time the ſaid Sir James Wallace ſeized Lieut. Charles Bourne, defendant in this cauſe, by the breaſt, or laid his hands violently on his breaſt, demanding of him, the ſaid Charles Bourne, if he would take the quarrel upon himſelf, which the ſaid Charles Bourne refuſed to do, until the ſaid Sir James Wallace had ſettled his diſpute with Mr. Murphy, meaning this deponent's ſaid maſter, aforeſaid.

ARTHUR CHARTERS MURPHY.
JOHN JACKSON.

AFFIDAVIT of PAUL CREBIN. No. XVI.

PAUL CREBIN, Lieutenant in the Portſmouth diviſion of his majeſty's marine forces, maketh oath and ſaith, that ſome time in the latter end of the year 1781,

defendant, Charles Bourne, applied to this deponent to change tours of duty with him, and go in his room in the Warrior, giving as his reaſon for ſuch application, his diſlike to ſail with Sir James Wallace, who he had known to act with great impropriety in a quarrel he had had with a Mr. Murphy, of White-hall; but deponent, for ſeveral reaſons, declined complying with the ſaid Charles Bourne's requeſt. And this deponent farther ſaith, that to his certain knowledge the ſaid Charles Bourne made applications to ſeveral other officers to the ſame purpoſe and effect.

PAUL CREBIN.

Sworn before me at Southwark, this 19th of Auguſt, 1783.

W. WINTER.

AFFIDAVIT of CHARLES BOURNE, No. XVII.

CHARLES BOURNE, firſt Lieutenant of marines, maketh oath, that he, this deponent, being ſerving on board his majeſty's ſhip the Warrior, in the month of February, 1782, Sir James Wallace, Knight, who then commanded the ſaid ſhip, put the following queſtion to him, and to Auguſtus Markett, one of the Lieutenants ſerving on board the ſaid ſhip, that is to ſay, "Why, if you thought yourſelves aggrieved, did not you call me out." And the ſaid Charles Bourne further ſaith, that all which has been advanced by the ſaid Sir James Wallace, Knt. or any other perſon, reſpecting the ſaid Charles Bourne and the ſaid Auguſtus Markett, having quarrelled with the inhabitants of Madeira, is fictitious, and void of the leaſt foundation. And this deponent moſt ſolemnly ſwears, that there were no weapons whatever in the room in which he waited expecting to receive Sir James Wallace at Bath. And he moſt poſitively denies having ever made any apology to the earl of Cork, as ſtated in the affidavit of that noble lord.

Sworn before me, this day of 1783.

AFFI-

AFFIDAVIT of JOHN WEIR, Esq. No. XVIII.

JOHN WEIR, Esq. late Surgeon of his Majesty's ship the London, maketh oath and saith, that some time in the month of July, 1782, he was walking with Lieut. Charles Bourne, of the Marines, at Port-Royal in the island of Jamaica, when the said Charles Bourne looking up, said to this deponent, there is the very man I want, who has treated me ill, or words to that effect; on which this deponent, turning about, and seeing two men together, asked if it was Sir James Wallace, to which the said Charles Bourne replied, yes, and immediately went up and civilly accosted the said Sir James Wallace, demanding redress for the injuries he had received, but the said Sir James Wallace refused to give him that redress, and seemed much inclined to go away; the said Charles Bourne told the said Sir James Wallace, he was not the brave man he wished the world to think him, but that he was a gasconader and pilferer of fame, and that if he did not give him satisfaction, he, the said Charles Bourne, should think himself obliged to cane him, the said Sir James Wallace; after which the said Sir James Wallace went away, and the said Charles Bourne, with this deponent, joined some gentlemen, who were at a few yards distance. And this deponent further most positively saith, that the said meeting was at that time of the day which was most public at Jamaica, and that the said Charles Bourne did not come out of a negro, or any other hut, or house, but had for a considerable time been conversing with this deponent, before the said Sir James Wallace came in sight.

JOHN WEIR,

Sworn at the Guildhall, London, August 3d, 1783. before me,

JOHN HART.

AFFIDAVIT of JAMES BROOKING, No. XIX.

JAMES BROOKING, of his majeſty's ſhip Ajax, maketh oath and ſaith, that he was paſſing cloſe by Sir James Wallace and Lieutenant Charles Bourne, when they met at Port-Royal in the iſland of Jamaica, in the month of July, 1782, and ſaw the ſaid Charles Bourne lay his hand upon his ſword, and demand ſatisfaction for ill treatment he had received; declaring that he would cane the ſaid Sir James Wallace, if he did not do him juſtice, or words to that effect. And this deponent further ſaith, that it was at that time of the day when moſt people were abroad, and that Sir James Wallace did not ſhew the leaſt inclination to come to the point, though ſeemingly urged in the warmeſt manner by the ſaid Charles Bourne to do ſo. And this deponent further ſaith, he verily believes it was only the intention of the ſaid Charles Bourne to obtain gentlemanlike ſatisfaction from the ſaid Sir James Wallace.

JAMES BROOKING.

Sworn at the Guildhall, London, Aug. 30th, 1783, before me

JOHN HART.

AFFIDAVIT of M. DANIEL SWYNY, No. XX.

M. DANIEL SWENEY, Lieutenant of his majeſty's marine forces, maketh oath and ſaith, that ſome time in the latter end of the year 1781, this deponent being then at breakfaſt with Captain Bonham of the Norfolk Eaſt India-man, Lieutenant Charles Bourne came to this deponent and requeſted he would change with him, the ſaid Charles Bourne, and go in his room on board the Warrior, giving, as his reaſon for ſuch application, his diſlike to ſail under the command of Sir James

James Wallace, who then commanded her, and whoſe conduct the ſaid Charles Bourne ſaid he had the greateſt reaſon to diſapprove of; but this deponent not chuſing to ſerve with a man of exceptionable character, declined complying with the requeſt of the ſaid Charles Bourne, as he imagined it was likely he might experience the ſame diſſatisfaction which he, the ſaid Charles Bourne, apprehended.

M. DAN. SWYNY.

Sworn before me, this 1ſt day of Sept. 1783, in Middleſex,

WILLIAM HYDE.

AFFIDAVIT of SEPTIMUS PEACOCKE.

No. XXI.

SEPTIMUS PEACOCKE, of Lincoln's-Inn Fields, Lieutenant in his majeſty's eighty-eighth regiment of foot, maketh oath and ſaith, that ſome time in the month of July 1782, he was preſent at Port-Royal in the iſland of Jamaica, and ſaw the meeting between Sir James Wallace Knight, and Lieutenant Charles Bourne, the defendant in this cauſe; and this deponent moſt poſitively ſaith, that the ſaid Charles Bourne did not come out of a negro, or any other hut, or houſe, at the time of the ſaid meeting, which was at the moſt public hour of the day, but was, and had been walking, apparently perfectly ſober, with a gentleman; and this deponent farther ſays, that having heard much of the ill-treatment received from the ſaid Sir James Wallace, by the ſaid Charles Bourne, he was induced to ſtop to ſee the reſult, when after a converſation of about one or two minutes, this deponent ſaw the ſaid Charles Bourne draw his ſword almoſt out of the ſcabbard, but that the ſaid Sir James Wallace did not draw, or attempt to draw, a ſmall ſword which he alſo wore, the ſaid Charles Bourne returned his ſword, after which the ſaid Sir James Wallace went away, ſaying ſomething that this deponent was at too great a diſtance diſtinctly to underſtand.

SEPTIMUS PEACOCKE.

Sworn at the Guildhall, London, this 22d July 1783, before me,

NATH. NEWNHAM,

AFFIDAVIT of JAMES RICHARDS and HENRY HODGE, No. XXII.

JAMES RICHARDS, Purſer of his Majeſty's ſhip Warrior, Sir James Wallace late commander thereof, and HENRY HODGE, Lieutenant in the Portſmouth diviſion of marines, and late on board the Warrior, ſeverally make oath and ſay, that during the time the ſaid ſhip Warrior was at the iſland of Madeira, in the month of February, in the year of Lord, 1782, which was about five or ſix days, they, theſe deponents, never ſaw Charles Bourne, a lieutenant of marines, on board the ſaid ſhip, any wiſe drunk, or intoxicated by liquor, nor did theſe deponents ever ſee him ſo, whilſt he was on board the ſaid ſhip, nor did they ever hear that he, the ſaid Charles Bourne, was ſo, during the ſaid ſhip's ſtay at Madeira as aforeſaid; nor do they believe that he was anywiſe drunk or intoxicated, during the ſaid ſhip's ſtay at Madeira as aforeſaid; nor did theſe deponents ever ſee or hear, nor do they believe, that the ſaid Charles Bourne in any manner inſulted, or quarrelled with any of the inhabitants of the ſaid iſland; and that they, theſe deponents, though they were on ſhore on the ſaid iſland, at the time of the ſaid ſhip's ſtay there; and this deponent, James Richards, was on ſhore the greateſt part of the time of the ſaid ſhip's ſtay, never heard, nor do they believe, that the ſaid Charles Bourne's ſhat was taken off his head by any perſon, at the ſaid iſland. And theſe deponents further ſay, that upon the ſaid Charles Bourne's coming on board the Warrior, at the ſaid iſland, the ſaid Sir James Wallace ſent for him into his cabin, and that upon the ſaid Charles Bourne's coming down into the ward-room, after he came from the cabin, both the ſaid Charles Bourne and Auguſtus Markett, one of the lieutenants of the ſaid ſhip, ſaid, in theſe deponents hearing, that Sir James Wallace had ſaid to them, "If you find yourſelves aggrieved by me, why don't you one by one call me out, to give you the ſotisfaction of a gentleman."

JAMES RICHARDS.
HENRY HODGE.

Sworn at Portſmouth, July 16, 1783, *before me,* JOHN CARTER, *Mayor.*

AFFIDAVIT

AFFIDAVIT of AUGUSTUS MARKETT, and GEO. PARIS MONKE. No. XXIII.

AUGUSTUS MARKETT and GEORGE PARIS MONKE, Lieutenants in the royal navy, and late Lieutenants of his Majeſty's ſhip Warrior, jointly and ſeverally make oath and ſay, that they the ſaid Auguſtus Markett and George Paris Monke for themſelves ſeverally ſay, that in converſations they had with Lieutenant Charles Bourne, defendant in this cauſe, before the ſaid ſhip Warrior's ſailing for the Weſt Indies, in the year 1781, the ſaid Charles Bourne had frequently expreſſed the diſtreſs he felt at being ordered under the command of Sir James Wallace, giving for reaſon that he was averſe to ſerve under the ſaid Sir James Wallace, becauſe the ſaid Sir James Wallace had, in a quarrel with a gentleman named Murphy, behaved in a moſt ungenerous manner. And the ſaid Auguſtus Markett ſaith, that the whole of the evidence ſtated, reſpecting the defendant, and the ſaid Auguſtus Markett refuſing to take off their hats in the public theatre at the Iſland of Madeira, and their having received orders by a ſerjeant, ſent by the Governor for that purpoſe, and of their having been concerned in riots and quarrels with the inhabitants, and having been pelted by them, is totally void of truth and foundation. And the ſaid George Paris Monke ſaith, that he was on ſhore with the ſaid defendant, Charles Bourne, and the ſaid Auguſtus Markett, at the iſland of Madeira, and he never ſaw, or ever heard of any drunkenneſs or riotous improper behaviour of the ſaid Charles Bourne, and Auguſtus Markett. And each of theſe deponents jointly and ſeverally ſay, that the defendant did not at any time cauſe diſputes in the ward-room among the officers, but was always reſpected by them for his peaceable and gentlemanlike behaviour; and that the conduct of Lieutenant Spry, then firſt lieutenant of the ſaid ſhip Warrior, one of the witneſſes in ſupport of the proſecution in this cauſe, was ſuch, that the officers in the ward-room found

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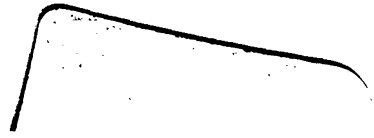
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